

NOTARY PUBLIC
and
JUSTICE OF THE PEACE
MANUAL

Prepared by
The Office of the Attorney General
and
The Department of State

pursuant to RSA 455:17

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INTRODUCTION

In New Hampshire, the Governor, with the advice and consent of the Executive Council, appoints public officials. The laws refers to these public officials as notarial officers. Notarial officers' official duties are notarial acts. The integrity of many New Hampshire business and legal transactions depends upon the knowledge and honesty of notarial officers. It is imperative that notarial officers have a thorough understanding of their duties and responsibilities. It is our hope that this manual will assist you in performing those duties effectively.

This manual discusses the privileges, duties, and responsibilities of Notaries Public, Justices of the Peace, Commissioners of Deeds and other officials authorized to perform notarial acts in New Hampshire. It also addresses the history and requirements of the Revised Uniform Law on Notarial Acts and other important issues such as electronic and remote notarization, military oaths and notarial acts, ethics, and unlawful acts. It does not address the judicial duties of a Justice of the Peace.

This manual also includes recommendations from the National Notary Association. You can access more information on the Association and its recommendations at <https://www.NationalNotary.org>. Other important resources include definitions, pertinent New Hampshire statutes, and industry standards for remote notarization (see appendices listed in the table of contents).

Throughout this manual we refer to sections of New Hampshire law using the abbreviation "RSA." This is an abbreviation for "Revised Statutes Annotated." The RSAs are a published collection of legislatively adopted laws. They are organized by titles and within each title there are chapters. For example, Title XLII is "Notaries, Commissioners, Justices of the Peace, and Acknowledgements" and Chapter 456-B is "Uniform Law on Notarial Acts." Within each chapter there are sections. For example, in RSA 456-B section B:1 is "Definitions"; B:2 is Notarial Acts; and so on. Sections are further subdivided as appropriate. To read an RSA you may go online to the State of New Hampshire's web site: <http://www.gencourt.state.nh.us/rsa/html/nhtoc.htm> Navigate to the title, chapter, and section of interest.

Throughout this manual the terms "notarize," and "notarization" are presumed to be notarial acts.

The Secretary of State prepared the manual with the advice and approval of the Attorney General pursuant to RSA 455. This manual is not a substitute for legal advice. This version is updated as of February 2022. Please note that court decisions and other law changes may have occurred since that date. The Secretary of State updates the manual consistent with statute changes within six months of the end of the relevant legislative session. The current edition of the manual is available in print form at the Secretary of State's Office, State House Room 204, 107 N. Main Street, Concord, NH, 03301 and on the Secretary of State's website: <http://www.sos.nh.gov/>.

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TRADITIONAL NOTARIAL ACTS

The Revised Uniform Law on Notarial Acts, as enacted into law in New Hampshire as RSA Chapter 456-B defines the content and form of common notarial acts and provides for the recognition of notarial acts performed in other jurisdictions. The National Conference of Commissioners drafted the Uniform Law in 1982 and, in 2018, approved a revised version, to include both electronic and remote notarization, which this manual covers below. New Hampshire adopted the Uniform Law in its original form in 2005 as RSA 456-B, and amended the law most recently in 2021 (effective February 6, 2022).

RSA 456-B applies to all public officials who perform notarial acts in New Hampshire, including Notaries Public, Justices of the Peace, and Commissioners. Each section below addresses relevant portions of RSA 456-B applicable to each type of notarial officer.

1. NOTARIAL OFFICERS IN NEW HAMPSHIRE

Pursuant to RSA 456-B, the following persons may perform notarial acts within this state:

- A Notary Public of New Hampshire;
- A Justice of the Peace of New Hampshire; or
- A judge, marital master, clerk, deputy clerk, register of probate, or deputy register of probate of any court of New Hampshire.

In 2019, the Legislature amended the law to allow residents of abutting states who are registered Notaries in that state and who are regularly employed or carry on a trade, business, or practice in New Hampshire to apply to be a New Hampshire Notary Public. Once commissioned in New Hampshire, such an individual is a Notary Public of New Hampshire.

RSA 456-B also permits those admitted to practice law in New Hampshire to administer an oath or affirmation for oral testimony.

In addition to those addressed in RSA 456-B, separate statutes authorize Commissioners of Deeds and certain members of the military to perform notarial acts. Notarial acts performed within New Hampshire under federal authority have the same effect as if performed by a notarial officer of New Hampshire. Licensed court reporters also have statutory authority to perform a limited notarial function. RSA 310-A:181 authorizes licensed court reporters to place any person under oath in the performance of their court reporting duties, without having been designated a Notary Public, Justice of the Peace, or Commissioner of Deeds, as specified in RSA 455.

RSA 310-A:181, 455:2, 456-B:3.

2. PROOF OF COMMISSION

A notarial officer should be able to produce a copy of his or her commission signed by the Governor, evidencing that he or she is a notarial officer upon request of any person seeking notarization services. The Secretary of State's office can also verify a person's status as a notarial officer.

In addition, RSA 456-B establishes the evidence that must be on a notarized document to show that a person is a notarial officer.

Notary Public

A signature and the official seal or legible official imprint of an electronic or rubber stamp are evidence that the person is a Notary Public. If the Notary uses an official rubber stamp rather than an official seal, the legible imprint of the stamp must contain the name of the Notary, the words "Notary Public" and "New Hampshire" and the Notary's commission expiration date.

Justice of the Peace

The name of the Justice and the expiration date of his or her commission are evidence that the person is a Justice of the Peace and that his or her signature is genuine. The name and expiration date of the commission may be typed, printed, or stamped on the document.

RSA 456-B:3.

3. NOTARIAL ACTS IN NEW HAMPSHIRE

A "notarial act" is any act that a Notary Public has authority to perform, including, but not limited to:

- taking an acknowledgement;
- administering an oath or affirmation;
- taking a verification upon oath or affirmation;
- witnessing or attesting a signature;
- certifying or attesting a copy; and
- noting a protest of a negotiable instrument.

The separate notarial officer sections below address the specific requirements for each notarial act. In addition to the acts identified in RSA 456-B, the sections below also address other New Hampshire statutes authorizing additional notarial acts.

456-B:1, I.

4. IDENTITY OF THE PERSON SEEKING NOTARIZATION

RSA 456-B requires that the notarial officer determine the identity of the person appearing before him or her. Verification of identity is a profound responsibility for a notarial officer. Proper identification is critical in preventing forgeries and other fraud. Notarial officers verify signer identity as a “fiduciary of the public.” As a result, “the notary is expected to perform with integrity and diligence.”

Notary’s Duty of Care for Identifying Document Signers, 32 J. Marshall L. Rev. 1003 (1999), Peter J. Van Alstyne.

RSA 456-B:2-b now defines satisfactory evidence of identity. RSA 456-B:6-a defines identity proofing, used when conducting a remote notarization. This manual discusses identity verification and proofing below.

The National Notary Association recommends that notarial officers act with reasonable care when verifying identity. Reasonable care is the degree of care that a prudent and competent person engaged in the same activity would exercise under similar circumstances. Reasonable care is a test of liability for negligence. While New Hampshire has yet to address the negligence issue specifically, other jurisdictions have found that a failure to exercise reasonable care in determining identity constitutes negligence. For example, a notarial officer who, as a favor, notarized a document without having the person named in the document appear before him or her and without confirming his or her identity, would likely be found to have acted negligently. As a result, a notarial officer should take the statutory duty to determine identity very seriously.

A PERSONAL APPEARANCE BEFORE THE NOTARIAL OFFICER IS REQUIRED, BUT FOR REMOTE NOTARIZATION MAY BE THROUGH COMMUNICATION TECHNOLOGY THAT PROVIDES SIMULTANEOUS SIGHT AND SOUND.

To perform any notarial act in someone’s name, that person must be in the physical presence of the notarial officer or connected with communication technology that provides simultaneous sight and sound. It is not sufficient that the notarial officer know the person and his or her signature on the document to be notarized. It is not sufficient that the person verify by telephone that it is his or her signature. Even where a notarial officer may work with and perform notarial acts regularly for another person, there are no exceptions to the legal requirement that the person be in the physical or virtual presence of the notarial officer for each and every notarial act.

a. DETERMINING IDENTITY

A notarial officer may determine the identity of the person before him or her in one of the two following ways:

- The notarial officer's own *personal* knowledge as to the identity of the person; or
- Receipt of satisfactory evidence.

Personal Knowledge of Identity

The first requirement is straightforward. If a notarial officer personally knows the individual who signed the document, the personal knowledge requirement has been satisfied. Personal knowledge does not require extensive knowledge of the individual or his or her history. If the notarial officer could testify under oath in a court of law as to the identity of the individual without using any identification or reference document, then the notarial officer has personal knowledge of the individual's identity.

RSA 456-B:2, I.

Satisfactory Evidence of Identity

If the notarial officer does not personally know the individual appearing before him or her, identification requires satisfactory evidence of the person's identity. RSA 456-B establishes the types of evidence that a notarial officer may accept as satisfactory evidence to establish identity.

- ***Identification by a Credible Witness***

A credible witness identifying the signer under oath or affirmation is satisfactory evidence of identity. The key here is that the witness must be credible *and* personally known to the notarial officer. It cannot be a person that the notarial officer has just met or someone the notarial officer knows to be dishonest. The witness must also personally know the signer appearing before the notarial officer. For example, an acquaintance of the notarial officer who personally knows the signer could identify the signer under oath or affirmation. However, in order for this to be satisfactory evidence, the notarial officer must know the acquaintance to be credible.

As with personal knowledge of identity above, extensive knowledge of the credible witness or his or her history is not required. The notarial officer is considered to "personally know" the witness if the notarial officer could testify under oath in a court of law as to the identity of the witness without using any identification or reference document.

- ***Identification by Documents***

Identification documents can also be satisfactory evidence of a signer's identity. The most commonly used form of identification document is a driver's license. Because of the importance

of identity verification, it is good practice for the notarial officer to inspect the identification document to be sure that it is valid and not altered. In addition, the notarial officer should check to be sure that the name on the identification document is exactly the same as the name on the document being notarized. If the identification document spells the name differently, or if the document says the person is, for example, John Doe, Sr. and the identification document says the person is John Doe, Jr., best practice would be to ask for clarification and additional documentation. The notarial officer must only perform the notarial act if satisfied that it is more likely than not that the signer is the person named in the identification document.

RSA 456-B:2, VI.

A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the individual presents a passport, driver's license, or government issued nondriver identification with the person's photo. The document must be current and unexpired. RSA 456-B:2-b, II(a)(1). A notarial officer may also accept other government identification that is current, unexpired and that contains the signature or a photograph of the individual. RSA 456-B:2-b, II(a)(2). A notarial officer may require additional information or credentials. RSA 456-B:2-a, III.

5. CERTIFICATE OF NOTARIAL ACTS

Every time a notarial officer performs a notarial act, he or she must complete, sign, and date a certificate. The certificate must include:

An identification of the jurisdiction in which the notarial act is performed; and

- The notarial officer's title.

If the official is a Notary Public, the certificate must also include the official stamp or seal and the date of expiration of the commission. If the officer is a commissioned officer on active duty in the military service of the United States, the certificate must also include the officer's rank.

A certificate of a notarial act is sufficient if it meets the above requirements and it:

- Is one of the short forms listed at the end of each notarial act section of this manual;
- Is in a form otherwise prescribed by New Hampshire law;
- For a notarization performed out-of-state by an authorized individual, is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or
- Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by RSA 456-B:2 (establishing identity, truth and accuracy of a copy; or for a protest, the matters set forth in RSA 382-A:3-505).

RSA 456-B:7.

6. NOTARIAL ACTS IN OTHER JURISDICTIONS OF THE UNITED STATES

A notarial act has the same effect under New Hampshire law even if performed in another state, commonwealth, territory, district, or possession of the United States, provided that any of the following persons performs the act:

- A Notary Public of that jurisdiction;
- A judge, clerk, or deputy clerk of a court of that jurisdiction; or
- Any other person authorized by the law of that jurisdiction to perform notarial acts.

Notarial acts performed in other jurisdictions under federal authority as provided in RSA 456-B:5 have the same effect as if performed by a notarial officer of New Hampshire.

The signature and title of a person performing a notarial act are sufficient evidence that the signature is genuine and that the person holds the designated title. The signature and indicated title of a Notary Public, a judge, a clerk, or a deputy clerk, conclusively establishes the authority of a holder of that title to perform a notarial act within that given jurisdiction.

RSA 456-B:4.

In New Hampshire and other jurisdictions where remote notarization is authorized, the notarial act is “performed” in the place where the notary is present at the moment of notarization. A New Hampshire notary may only perform notarizations when the notary is physically present in New Hampshire. For a remote notarization conducted in conformance with all requirements, the person whose act/document is being notarized need not be present in New Hampshire. However, for an individual located outside the United States, the notarization must be for use in the United States or relate to property or a transaction in or substantially connected to the United States. See RSA 456-B:6-a, III. The law of the place where the remote individual is located must not prohibit the notarial act.

7. NOTARIAL ACTS UNDER FEDERAL AUTHORITY

Notarial acts performed anywhere by any of the following persons have the same effect under New Hampshire law as if performed by a notarial officer of New Hampshire:

- Judge, clerk, or deputy clerk of a court;

- A commissioned officer on active duty in the military service of the United States;
- An officer of the foreign service or consular officer of the United States; or
- Any other person authorized by federal law to perform notarial acts.

The signature and title of a person performing a notarial act are sufficient evidence that the signature is genuine and that the person holds the designated title. The signature and title of one of the officers listed above conclusively establish the authority of that person to perform a notarial act.

RSA 456-B:5.

8. FOREIGN NOTARIAL ACTS

A notarial act performed by any of the following persons within and under the authority of a foreign country or an international organization has the same effect under New Hampshire law as if performed by a notarial officer of New Hampshire:

- A Notary Public or notary of the foreign jurisdiction;
- A judge, clerk, or deputy clerk of a court of record of the foreign jurisdiction; or
- Any other person authorized by the law of the foreign jurisdiction to perform notarial acts.

Either of the following conclusively establishes the authenticity and validity of the notarial act:

- A certificate by a foreign service or consular officer of the United States stationed in the country under the jurisdiction of which the notarial act was performed;
- A certificate by a Foreign Service or consular officer of that country stationed in the United States.

An official stamp or seal of the person performing the notarial act is sufficient evidence that the signature is genuine and that the person holds the indicated title. The official stamp or seal of any of the following officers conclusively establishes their authority to perform a notarial act:

- A Notary Public or notary; or
- A judge, clerk, or deputy clerk of a court of records.

If the title of office and indication of authority to perform notarial acts appears in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

RSA 456-B:6.

NOTARIES PUBLIC

A Notary Public is an official appointed by the Governor, with the advice and consent of the Executive Council. The official responsibilities of Notaries Public include, among other things, administering oaths and affirmations, witnessing signatures, taking depositions, and acknowledging deeds and other instruments.

RSA 455:1, 3.

1. QUALIFICATIONS

A person applying to be a Notary Public must:

- Be at least 18 years of age;
- Be a New Hampshire resident or be a resident of an abutting state who is a Notary Public in that state of residence, and regularly employed or carries on a trade, business, or practice in New Hampshire at the time of applying; and
- Be endorsed by two New Hampshire Notaries Public and a person registered to vote in New Hampshire.

The definition of resident, found at RSA 21:6, is: “a person who is domiciled or has a place of abode or both in this state and in any city, town, or other political subdivision of this state, and who has, through all of his or her actions, demonstrated a current intent to designate that place of abode as his or her principal place of physical presence to the exclusion of all others.”

The endorsement by two New Hampshire Notaries Public and a person registered to vote requires more than just the endorsers’ signatures on the application. It requires that the endorser actually give his or her approval and support to the applicant. Such approval requires that the endorser, at a minimum, personally know the applicant and believe that he or she is of a character consistent with the honesty and integrity required of a Notary Public.

In addition to the above qualifications, it is within the discretion of the Governor and Executive Council to find particular criminal convictions as disqualifying. Given that all applicants are statutorily required to provide a criminal background by signing a written statement under oath regarding their criminal history, this information is relevant to the appointment process and may be taken into consideration by the Governor and Executive Council during contemplation of an application.

RSA 5:10, 455:2, 455:16.

2. APPLICATION

The Secretary of State's office processes Notary Public applications. In order to apply to become a Notary Public, a person must complete the following steps.

- Obtain an application and criminal record release form from the Secretary of State's Office via mail, phone, fax, email or download at:

Secretary of State's Office
State House, Room 204
107 North Main Street
Concord, NH 03301
(603) 271-3242 (phone)
(603) 271-6316 (fax)
elections@sos.nh.gov
<https://sos.nh.gov/administration>

- Complete the application and have it endorsed by two New Hampshire Notaries Public and a person registered to vote in New Hampshire. These should be individuals who know the applicant and are able to "endorse" the applicant's suitability to be entrusted with the authority of a Notary Public.
- Sign a written statement under oath as to whether he or she has ever been convicted of a crime that was not annulled by a court, other than minor traffic violations.
- Pay a seventy-five dollar fee to the Secretary of State.

The applicant must mail or deliver the completed application, criminal record release form, and fee to the Secretary of State's office at the above address.

Qualifying Nonresident Applicants

A resident of an abutting state who is a Notary Public in their state of residence, and is regularly employed or carries on a trade, business, or practice in New Hampshire at the time of applying must complete the application process outlined above. In addition, a nonresident applicant must:

- Provide a criminal record check from his or her home state (in addition to the New Hampshire criminal record check above); and
- Submit to the Secretary of State (with the application materials and fee outlined above) an affidavit stating that the individual (i) is a resident of an abutting state, (ii) is a registered notary in such state, and (iii) is regularly employed or carries on a trade, business, or practice in New Hampshire.

RSA 5:10, 455:2.

APPLICANTS MUST NOT MAKE A FALSE REPRESENTATION ON THE APPLICATION.

A Notary Public applicant must not:

- Negligently make a material false representation on the application;
- Recklessly make a material false representation on the application; or
- Purposefully or knowingly make a material false representation on the application form.

Any person who negligently or recklessly makes a material false representation on the application form is subject to a civil penalty of up to one thousand dollars *per violation*. Any person who purposefully or knowingly makes a material false representation on the application form is guilty of a class A misdemeanor.

RSA 455:16.

PLEASE ALSO REFER TO THE ETHICS AND UNLAWFUL ACTS SECTIONS BELOW.

3. APPOINTMENT

The Secretary of State's office submits completed applications to the Governor and Executive Council (Governor and Council) for nomination. If, after review of the application and criminal record check results the applicant is nominated to become a Notary Public, the application is once again submitted by the Secretary of State's office to the Governor and Council, this time for appointment. The Governor, with the advice and consent of the Executive Council, may then make the appointment. This two-step process generally takes eight to ten weeks.

When a person has a criminal record in New Hampshire, the applicant is notified and provided with a copy of the State Police report. The applicant receives a letter advising that if the person still seeks appointment as a Notary he or she must contact his or her Executive Councilor. The applicant must provide the Councilor with a copy of the record, and seek the Councilor's approval of the application moving forward for a vote. If the Councilor notifies the Secretary of State's Office that he or she approves, the nomination is moved forward for a vote to appoint at the next meeting. The list of proposed appointments has an asterisk (*) by the name of nominees in this circumstance.

A Notary Public's commission begins on the date the Governor and Council confirm the appointment. The commission will indicate the appointment date. The individual, however, may not act as a Notary Public until he or she has taken the oath of office.

Approximately one week after appointment by the Governor and Council, a newly appointed Notary Public will receive his or her commission in the mail, along with the oath of office, and other information from the Secretary of State's office. The Notary should review and keep the information provided. The oath and commission need further action as described below.

RSA 92:2, 455:1.

4. TERM

A Notary Public's commission lasts five years from the date of appointment.

RSA 455:1.

5. OATH OF OFFICE AND COMMISSION

After receiving the oath of office and commission in the mail, a Notary Public must complete the following steps.

- Sign and take the oath of office before the authorized officials listed below.
- Ensure that the person(s) who administer the oath sign and affix their official seal (stamp) to the oath and to the Notary Public's Commission. Keep the signed commission for your records.
- Return the oath to the Secretary of State's office as soon as possible. Unless the oath is on file at the Secretary of State's office, the office cannot certify that you are qualified to act as a Notary Public.

A NOTARY PUBLIC CANNOT SIGN DOCUMENTS UNTIL HE OR SHE HAS TAKEN THE OATH OF OFFICE.

RSA 92:2, 92:5.

No person appointed to hold a public office where an oath is required, including Notaries Public, may exercise such office or perform any act of the office until he or she makes and subscribes the oath required by the New Hampshire Constitution.

RSA 92:2.

The following individuals may administer the official oath to a newly appointed notarial officer: any two members of the New Hampshire Executive Council, any member of the New Hampshire Executive Council with a New Hampshire Justice of the Peace, any two New Hampshire Justices of the Peace, any New Hampshire Justice of the Peace with any New Hampshire Notary Public, or any two New Hampshire Notaries Public.

The New Hampshire Constitution prescribes the official oath of office for public officials as follows:

I, A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as [a Notary Public], according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.

The person taking the oath substitutes his or her name as written on the commission for “A.B.”

If an individual has a religious objection to taking an oath or is otherwise opposed to taking an oath, he or she may make an affirmation instead. For such persons, the New Hampshire Constitution provides that the Notary may alter the oath to omit the word “swear” and the words “[s]o help me God,” and, instead, to say: “This I do under the pains and penalties of perjury.” A person whose beliefs do not allow him or her to either swear or affirm faith and true allegiance to the United States of America and the State of New Hampshire is not entitled to hold the position of Notary Public, an office of that government.

The oath of office is more than just ceremony and should be taken seriously. A Notary Public who violates his or her oath will be dismissed from office.

N.H. Constitution, Part II, Art. 84; RSA 92:5.

6. NOTARY SEAL

All of a Notary Public’s certifications must either be under an official seal or carry the legible imprint of an official rubber stamp. This requirement can be satisfied for electronic and remote notarizations with “an electronic image attached to or logically associated with an electronic record” that is an X.509 (or similar industry-standard) compliant digital certificate. RSA 456-B:1, IX. See further discussion of both electronic and remote notarization below.

An official seal must contain:

- The Notary’s name; and
- The words “Notary Public” and “New Hampshire”.

If the Notary uses an official seal, he or she must also have a separate rubber stamp containing his or her commission’s expiration date.

An official rubber stamp must contain:

- The Notary's name;
- The words "Notary Public" and "New Hampshire"; and
- The expiration date of the Notary Public's Commission.

An electronic seal must contain the same information and be an X.509 (or similar industry-standard) compliant digital certificate.

The Secretary of States does not provide the seal and/or rubber stamp. The Notary must purchase them from an office supply store or other vendor. Notaries who perform electronic and/or remote notarizations must obtain and must use an X.509 (or similar industry-standard) compliant digital certificate, which is tamper resistant and capable of authentication. See further discussion below.

While state law permits Notaries Public to use a rubber stamp, it may not be sufficient for certain purposes. For example, federal passport regulations may require a raised seal. A Notary Public should consider whether the rubber stamp is sufficient for each type of notarial act. If uncertain, the Notary or the person signing should consult with the authority with whom the person signing will file the document. This is particularly important where the person signing will file the document internationally.

RSA 455:3.

7. FEES

Notaries Public are entitled to a fee of up to ten dollars for each oath, witness, service, or certification performed, with three exceptions. First, for services related to the taking of depositions, a Notary Public is entitled to a fee of at least five dollars but no more than fifty dollars. The Notary can vary the fee depending upon the amount the Notary feels is sufficient payment for the deposition services. Second, a Notary Public may not charge a fee for administering and certifying oaths of office of town officers. Third, for performing notarial acts for a remotely located individual under RSA 456-B:6-a, a notary shall be entitled to a fee of twenty-five dollars per act.

In addition to the fees, when a Notary Public travels to swear witnesses, he or she is entitled to twenty cents per mile as mileage.

RSA 455:11; 517:19.

8. JOURNAL

A journal is required for all notarial acts performed with respect to a remotely located individual. For all other notarial acts, while not required by law, it is recommended that a Notary Public maintain a journal. Good practice would dictate including in the journal, at a minimum, the following information:

- (1) The notarial act performed;
- (2) The date of the notarial act;
- (3) The identifying information of the person appearing before the Notary Public; and
- (4) Any other details the Notary Public believes would be useful in referring back to the act.

A journal will provide a record of the details of each notarial act that the Notary Public can refer to if called upon to verify the act. RSA 456-B:8-c. See further discussion of journals for remote notarizations below.

Example of a paper journal:

OFFICIAL JOURNAL RECORD OF NOTARIAL ACT			TYPE OF NOTARIAL ACT	
DATE OF NOTARIZATION	TIME	AM/PM	<input type="checkbox"/> ACKNOWLEDGMENT	ACT PERFORMED ELECTRONICALLY (Platform)
DATE OF DOCUMENT			<input type="checkbox"/> JURAT	
TYPE OF DOCUMENT			<input type="checkbox"/> SIGNATURE	ACT PERFORMED REMOTELY (Platform)
NO. OF DOCUMENTS	FEE \$		<input type="checkbox"/> CERTIFICATION COPY	
			<input type="checkbox"/> OTHER _____	A/V File Location
SIGNER TO COMPLETE THIS SECTION			TYPE OF IDENTIFICATION	
SIGNATURE			<input type="checkbox"/> Personal Knowledge	<input type="checkbox"/> ID Document _____ (Type & Issuing Entity) Issue/Exp Date
PRINTED NAME			<input type="checkbox"/> Credible Witness Name _____ (Signature)	
ADDRESS			<input type="checkbox"/> OTHER _____	(PKA, Credential Analysis, etc.)
CITY/ST/ZIP			INCLUDE OTHER INFORMATION ON BACK	

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9. NAME CHANGE

A Notary Public should notify the Secretary of State's office any time his or her name changes during his or her five-year commission. When notifying the Secretary of State, the Notary Public must include his or her former name and new name and any change of address.

In addition, a Notary Public should request a new commission reflecting his or her new name. The fee for a new commission is five dollars payable by cash or check to the Secretary of State's Office.

If the Notary Public is within six months of the end of his or her five-year commission, the Secretary of State's office practice is to permit the Notary Public to continue to sign official documents using both the old and new names rather than requesting a new commission. For example, if Jane Smith's name changes to Jane Jones she could sign as Jane (Smith) Jones.

A Notary Public should notify the Secretary of State's office of an address change during his or her five-year commission. Failure to notify the Secretary of State's office will result in the Notary Public not receiving an application for reappointment.

11. POWERS AND DUTIES

Once commissioned, a Notary Public has the power to perform a number of notarial acts for an in-person individual within the State of New Hampshire and with respect to both tangible and electronic records. In addition, a Notary Public may perform defined notarial acts for a remotely located individual by means of communication technology. For further details on the procedures and requirements for performing both in-person electronic notarizations and remote notarizations, see the relevant Sections on these topics in this Manual. A notarial act is any act that a Notary Public has authority to perform which includes:

- Administering an oath or affirmation
- Taking a verification upon oath or affirmation
- Taking an acknowledgement
- Witnessing or attesting a signature
- Certifying or attesting a copy
- Noting a protest of a negotiable instrument
- Depositions
- Observing the opening of a safe deposit box for which the rent has not been paid

RSA 383-B:5-501, 455:3, 456-B:1, I.

A Notary Public is performing one of the listed acts, therefore, a Notary Public may not sign a blank document or jurat. The Notary Public must witness the act being notarized, by witnessing the signature, or oath, or directly verifying the accuracy of a copy being certified.

Note - If a Notary inadvertently omits the expiration date, he or she can subsequently add it pursuant to RSA 456:B-7. However, notarial officers should be warned that altering other items on the certificate, or pre or post-dating, could constitute “tampering with public records or information”, a crime under to RSA 641:7.

A NEW HAMPSHIRE NOTARY PUBLIC MAY NOT PERFORM NOTARIAL ACTS OUTSIDE THE STATE.

A notarial act is “performed” in the place where the notary is physically located at the time of the notarization. For traditional notarial acts the individual whose act is being notarized must be physically present in the same place as the notary. A notary who performs remote notarization may perform a notarial act for a remotely located individual who is elsewhere in New Hampshire, out-of-state, or out of the United States.

What if a person cannot sign his or her own name?

A Notary Public may still perform a notarial act for a person who is unable to sign his or her name due to a physical disability or other inability to write. The Notary should make accommodations to allow a person with this type of disability to have a document notarized. The notarial laws define a “signature” as “a tangible symbol or an electronic signature that evidences the signing of a record.” RSA 456-B:1, XII. Other statutes provide additional guidance. For example, the Uniform Commercial Code (RSA 382-A:1-201) defines the word “signed” to include any symbol executed or adopted by a party with present intention to authenticate a writing. It is best practice to permit the person to sign the document by marking an “X” or other symbol on the signature line. If the person is unable to make any mark at all, he or she may use a signature stamp. The Notary Public should exercise considerable caution in making sure the signature, whether a symbol or stamp, is the true signature of the signer. The Notary may want to have a witness present in such circumstances.

If another person needs to make the mark or signature for the signer, the Notary should add a statement to the notarial certificate stating that this occurred. For example, if a Notary is notarizing a document for John Doe, who is a quadriplegic, and Jane Doe, his wife, signs his name after he communicates to the Notary his intent that the document be signed, the Notary could write: “Notarized in the presence of John Doe, who was unable to sign his name due to a disability. Mr. Doe communicated his intent to sign this document and his wife Jane Doe signed his name in my presence.”

12.ADMINISTERING AN OATH OR AFFIRMATION

A Notary Public may administer oaths and affirmations. An oath is “a solemn declaration, accompanied by a swearing to God or a revered person or thing, that one’s statement is true or that one will be bound to a promise.” For example, “I, [name of declarant], do solemnly swear that [statement] is true, so help me God.” An affirmation is “a solemn pledge equivalent to an oath but without reference to a supreme being or to swearing....” If a person has a religious or other objection to taking an oath, he or she can make an affirmation instead. For such persons, the notary may alter the oath to omit the word “swear” and replace it with the word “affirm” and to omit the words “[s]o help me God,” and, instead, to say: “This I do under the pains and penalties of perjury.” For example, “I, [name of declarant], do solemnly affirm, that [statement] is true, under the pains and penalties of perjury.”

The purpose of an oath or affirmation is simply “to ensure that the affiant consciously recognizes his [or her] legal obligation to tell the truth.” Therefore, no particular ceremony is necessary other than that the declarant hold up his or her right hand. The affiant must just “know [] that his [or her] statement is sworn and given under oath in the presence of an oath taker.” RSA 516:19 allows that “any other form or ceremony may be used which the person to whom the oath is administered professes to believe more binding upon the conscience.” It is important to note that a notary must accommodate any person who, due to disability, cannot hold up his or her right hand, and may use any reasonable means of ensuring the person taking the oath understands the seriousness of the act.

Black’s Law Dictionary (11th ed. 2019), N.H. Constitution, Part II, Art. 84; RSA 455:3, 516:19, 20. Appeal of State of New Hampshire, 144 N.H. 85 (1999).

a. SWEARING IN A WITNESS DURING COURT PROCEEDINGS

When swearing in a witness during court proceedings, a Notary Public should request the witness to raise his or her right hand before making the oath. If the witness objects to raising his or her hand, he or she may use any other form or ceremony, as long as he or she “professes to believe [it] more binding upon the conscience.”

The oath generally used for swearing in a witness is:

Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

The language generally used for a witness making an affirmation rather than an oath is:

Please raise your right hand. Do you, under the pains and penalties of perjury, affirm to tell the truth, the whole truth and nothing but the truth?

RSA 516:19, 92:3.

Attorneys

In the State of New Hampshire, any person admitted to the practice of law in New Hampshire may administer an oath or affirmation as described above for taking oral testimony.

RSA 456-B:3, IV.

b. OATHS OF OFFICE FOR PUBLIC OFFICIALS

Persons appointed to hold public offices are statutorily required to take an official oath of office. No person chosen or appointed to any public office or to any position where an oath is required can exercise such office or position or perform any act therein until he or she has taken the oath. Any person who violates his or her oath will be dismissed from the office or position involved. RSA 92:2.

Notaries Public May Administer Official Oaths.

Notaries Public may administer official oaths as follows:

- To all military officers above the rank of field officers by any New Hampshire Notary Public with any New Hampshire Justice of the Peace; and
- To all other officers appointed by the Governor and Council, by any New Hampshire Notary Public with any New Hampshire Justice of the Peace, or any two New Hampshire Notaries.

Language of Official Oaths

The New Hampshire Constitution prescribes the oath a public official must take:

I, A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as, according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.

The name of the person taking the oath replaces “A.B.” above and the office the person will perform fills the blank.

If a person does not wish to swear, the notary may substitute "*affirm*" for "*swear*," and the words "*[t]his I do under the pains and penalties of perjury*," for "*[s]o help me God*." Such affirmation shall, for all purposes, be and constitute an oath.

N.H. Constitution, Part II, Art. 84; RSA 92:3, 5.

Ceremony Required for Official Oaths

The person taking the oath is required to hold up his or her right hand, unless unable to do so due to a disability. No other ceremony is necessary. RSA 92:4.

Oaths are to be Administered in the Physical Presence of the Person Making the Oath

The individual taking the oath must be physically present with the Notary administering the oath. If the law requires that the oath be taken in the presence of two officials, for example for a notary taking the oath as a notary public, both of the officials administering the oath must be physically present with the individual taking the oath.

However, administering an oath and documenting the satisfactory swearing or affirming to the oath is a notarial act. The law authorizing a notary, who obtains the necessary tools and files their intent to perform remote notarization with the Secretary of State, does not exclude administering an oath from the acts a notary public may perform remotely. Therefore, if a notary public exercises this authority to administer an oath remotely, all oath administrations must be video recorded, with the video preserved for ten years.

A notary is limited to being one of the two officials administering the oath of office to “military officers above the rank of field officers, and to all other officers appointed by the governor and council” Notaries who also serve as a town/city clerk, moderator, selectman, or school board member may also administer certain oaths of office to town, city, or school officers, but the authority to conduct remote notarization does not apply when the notary is acting in these other capacities.

Best practice is to administer oaths of office in person.

RSA 92:5.

Certification and Recording of Official Oaths

The person administering an official oath must sign and affix his or her official seal (stamp) to the oath and return it immediately to the recording officer of the body making the election or appointment.

The Secretary of State’s office records, among others, the following oaths: Notaries Public, Justices of the Peace, Commissioners of Deeds, the Attorney General, Deputy Attorney General, Assistant Attorneys General, State Representatives, State Senators, the Governor, all

commissioners, board members, and department and division heads appointed by Governor and Council, County Elected Officials.

The oaths of any town elected or appointed officials are recorded with the town clerk.

The oaths recorded with the recording officer for the school district include, but are not limited to the following: Treasurer of the school board, and members of the school budget committee.

N.H. Constitution, Part II, Art. 84; RSA 42:8, 92:6.

c. TAKING A VERIFICATION UPON OATH OR AFFIRMATION

A verification upon oath or affirmation is a declaration under oath or affirmation in front of a Notary Public (or other authorized official) that a written statement is true. A Notary Public's certification of that verification upon oath or affirmation is referred to as a jurat. A jurat is required anytime a person must swear to the truth of the contents of a document, such as for an affidavit and certain court documents. In executing a jurat, a Notary is confirming that the person appeared before the Notary, took an oath or affirmation attesting to the truthfulness of the document, and signed the document in the Notary's presence.

An example of the wording that a Notary Public may use in taking a verification upon oath or affirmation is "Do you solemnly swear that the contents of this [name of document] signed by you are true and correct, so help you God?" or "Do you swear and affirm that the contents of this [name of document] signed by you are true and correct?"

As with all notarial acts, it is very important that the Notary identify the person making the verification upon oath or affirmation. The notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the officer and making the verification is the person whose true signature is on the statement verified. Please see **IDENTITY OF THE PERSON SEEKING NOTARIZATION** on page 7 for a complete description of the identification process. Proper identification is especially important for verifications because the Notary is certifying that the signer attested to the truthfulness of the document. Note that a jurat on a document does not prove that its contents are true, it simply establishes that the signer has sworn that the contents are true.

RSA 456-B:1, III, 456-B:2, II.

Sample Certification of Verification Upon Oath or Affirmation (Jurat)

State of New Hampshire County of _____
Signed and sworn to (or affirmed) before me on the ____ day of _____, 20__ by _____ (name(s) of person(s) making statement).
_____ (Signature of notarial officer)
(Seal, if any)
Notary Public, State of New Hampshire
My commission expires _____

RSA 456-B:8, III.

13.TAKING AN ACKNOWLEDGEMENT

An acknowledgment is a declaration in front of a Notary Public (or other authorized official) that the person has signed a document for the purposes stated in the document. The purpose of an acknowledgment is for the Notary to confirm that the person making the acknowledgment is the person whose signature is on the document. Please see IDENTITY OF THE PERSON SEEKING NOTARIZATION on page 7 for a complete description of the identification process.

Acknowledgements are generally executed on deeds and other documents that are publicly recorded by a county official.

Note that the document may have been signed on a date prior to when the person is appearing before the Notary to acknowledge the signature. This differs from witnessing a signature, which requires signing the document in the presence of the Notary Public.

The difference between an acknowledgment and a verification upon oath or affirmation is that for an acknowledgment a person is swearing that he or she is the person who signed the document while for a verification, in addition to swearing that he or she signed the document, the person is swearing that the contents of the document are true.

RSA 456-B:1, II; 456-B:2, I.

Acknowledgements - Individual or Representative Capacity

An acknowledgement may be made in an individual capacity or in a representative capacity. If an acknowledgement is made in an individual capacity, the person appearing before the Notary is acknowledging the document and signature on his or her own behalf. When making an acknowledgement in a representative capacity, the person appearing before the Notary is appearing on behalf of some other person or entity.

A person may be appearing in a representative capacity in one of the following four ways:

- For or on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;
- As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;
- As an attorney in fact for a principal; or
- In any other capacity as an authorized representative of another.

When a person makes an acknowledgement in a representative capacity, the person is declaring that he or she signed the instrument with proper authority, and executed it as the act of the person or entity represented and identified in the document. The Notary must still determine the identity of the person appearing before him or her for such acknowledgements. The Notary is certifying that the person represented him or herself to the Notary as having authority to act in the representative capacity. The Notary does not have a duty to determine if the person in fact and law does have authority to represent the other person or entity. The jurat establishes only that the representation was made, not that the authority to represent the other person or entity exists in fact and law.

One common form of representative capacity is a power of attorney. A power of attorney is a document that a person (commonly referred to as the "principal") completes and signs granting another person (the "agent") authority to manage some aspect of the principal's property, finances, or health, among other things. This power can be broad or general. When the agent is signing a document in his or her capacity as power of attorney, he or she will typically sign his or her own name followed by "power of attorney for" and the name of the principal. The Notary Public must determine the identity of the person appearing before him or her (the agent), not the person being signed for (the principal). Best practice for a Notary Public in notarizing a document for a person using a power of attorney would be to require the agent to provide a certified copy of the power of attorney document evidencing that the agent has the authority to acknowledge the document for the principal.

Attorneys will typically include a copy of the power of attorney if the notarized document is one recorded or filed with a court.

RSA 456-B:1, II, IV; 564-E.

Sample Procedure for Taking an Acknowledgement

The Notary Public should request the signer to raise his or her right hand and ask, “Do you swear and acknowledge that the signing of this document is your voluntary act and deed?” The signer must give an affirmative response before the Notary Public can complete the certification.

Certification of an Acknowledgement

After the Notary Public is satisfied that the person appearing before him or her is the person whose signature is on the document, the Notary must complete a certification. In doing so, the Notary certifies that the individual appeared before him or her on the date indicated and acknowledged the document in question. The certification is not part of the document, and does not affect its validity. The certification a Notary uses will vary depending upon whether the acknowledgement is made in an individual or representative capacity. Examples of each are provided below.

Sample Certification for an Acknowledgement Made in an Individual Capacity

State of New Hampshire
County of _____

This instrument was acknowledged before me on the ____ day of _____, 20__ by
_____ (name(s) of person(s)).

(Signature of notarial officer)

(Seal, if any)

Notary Public, State of New Hampshire

My commission expires: _____

RSA 456-B:8, I.

Sample Certification for an Acknowledgement Made in a Representative Capacity

State of New Hampshire

County of _____

This instrument was acknowledged before me on the _____ day of _____, 20____ by
(name(s) of person(s)) as _____ (type of authority, e.g. officer, trustee, etc.) of
_____ (name of party on behalf of whom instrument was executed.)

(Signature of notarial officer)

(Seal, if any)

Notary Public, State of New Hampshire

My commission expires: _____

RSA 456-B:8, II.

Taking an Acknowledgement for a Document that Needs an Apostille

Many countries require evidence that the signatures of public officials from other countries are authentic. Prior to the Hague Convention in 1961, all documents going from the United States to a foreign country had to be “legalized.” Essentially, legalization required the United States to have diplomatic or consular agents certify the authenticity of signatures, the capacity of the signer, and the identity of the seal or stamp on the document. The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents eliminated this cumbersome requirement and replaced it with a much simpler process that still ensured the legitimacy of the document. This simpler process is an apostille.

An apostille is a certification that a public official’s signature on a document is authentic. An apostille certifying a notarization by a New Hampshire public official can only be obtained from the Secretary of State’s office. However, before a document can receive an apostille from the Secretary of State’s office, it must have the original signature of a Notary Public or Justice of the Peace witnessing the signature of the public official. As a result, a Notary Public may be asked to take an acknowledgement of a document that will need an apostille. One common example is the requirement in many countries that the documents required for a United States citizen to adopt a child born in that country is notarized and that an apostille certify that the Notary’s signature is legitimate.

It is important to note that the apostille process established by the Hague Convention only applies to countries that have chosen to be parties to the Convention or that have since formally adopted the process. The Secretary of State keeps a list of the Members of the Hague Conference on Private International Law at <http://sos.nh.gov/>. Please see also: <https://www.hcch.net/en/states/hcch-members>.

RSA 5-C:99.

Getting an Apostille

Any document sent to a country that has adopted the apostille process must have an apostille on it. In New Hampshire, only the Secretary of State's Office can issue an apostille.

Under state law, a vital record with an apostille must contain the following:

- The signature of the state registrar or the clerk of the town or city;
- The notarized acknowledgement of the state registrar or clerk; and
- The acknowledgement of the document by the Secretary of State, including his or her signature and seal.

RSA 5-C:99.

BEFORE A DOCUMENT CAN RECEIVE AN APOSTILLE BY THE SECRETARY OF STATE'S OFFICE, IT MUST HAVE AN ORIGINAL NOTARY PUBLIC OR JUSTICE OF THE PEACE SIGNATURE WITNESSING THE SIGNATURE OF THE PERSON SWEARING TO OR AFFIRMING THE DOCUMENT.

The Secretary of State cannot certify signatures of town and city clerks, county or state registrars or other state officials. The signatures must be those of a Notary Public or Justice of the Peace for the State of New Hampshire. If signed by a Notary, the Notary's seal must be on the document. When the Secretary of State's office attaches the apostille, it is certifying that the signature of the Notary Public or Justice of the Peace, ***not the person swearing to or affirming the document***, is authentic.

Fee for Apostille

The Secretary of State's office charges a ten-dollar fee per apostille. The fee is payable to the State of New Hampshire by cash or check. In addition to the regular fee, there is an expedited fee to receive apostilles on ten or more documents the same day of the request. Currently, there is no expedited fee for less than ten documents. The expedited fee for ten to twenty documents is twenty-five dollars, for twenty to thirty documents is fifty dollars, and for thirty to forty documents is seventy-five dollars.

RSA 5:10.

A NOTARY PUBLIC CANNOT CERTIFY A COPY OF A DOCUMENT CONTAINING AN APOSTILLE.

Certifying a copy is a notarial act in which a notarial officer certifies that a copy of a document is a true and accurate reproduction of the original. Under New Hampshire law, an apostille is a vital record document and cannot be copy certified by a Notary Public or Justice of the Peace.

RSA 5-C:98, 99.

14.DEPOSITIONS

A deposition is a written record of a witness's out-of-court testimony made for later use in court or for discovery purposes in a legal action. In New Hampshire, depositions occur before a Notary Public, or other authorized notarial officer. Generally, the opposing party requests a deposition. The person being deposed is commonly referred to as the "deponent." The attorney requesting the deposition asks the deponent questions first. Questions from the attorney for the deponent usually follow. If there are multiple parties to the legal action, the attorneys for each party have the opportunity to question the deponent.

RSA 516:4, 517:2.

Notice of Deposition

A Notary may issue a notice for witnesses to appear before that Notary, or any other Justice or Notary, to give depositions in any matter in which a deposition is lawful. A notice of deposition must be in writing and must contain the day, hour, and location of the deposition. The Notary Public must sign the notice.

RSA 517:4.

Deposition Testimony is Given Under Oath

Prior to the start of the deposition, the deponent must take an oath or affirmation that his or her testimony will be truthful. The Notary may administer this oath or affirmation in the same manner as one swears a witness during court proceedings. The Notary should request that the witness raise his or her right hand before making the oath or affirmation. If the witness objects to raising his or her hand, he or she may use any other form or ceremony, so long as he or she "professes to believe [it] more binding upon the conscience."

The oath generally used for swearing in a witness is:

Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

The language generally used for a witness making an affirmation rather than an oath is:

Please raise your right hand. Do you, under the pains and penalties of perjury, affirm to tell the truth, the whole truth and nothing but the truth?

Since any person admitted to the practice of law in New Hampshire may administer an oath or affirmation for oral testimony, an attorney present at a deposition could also administer the oath or affirmation to the deponent.

RSA 456-B:3, IV; 516:19.

Signing of the Deposition under Oath

After a deposition is taken and, if necessary, transcribed, the deponent generally reviews the deposition for accuracy. The deponent must then sign the deposition under oath attesting to the accuracy of the transcript. The language of such oath is required by law:

[C]ontains the truth, the whole truth and nothing but the truth relative to the cause for which it was taken.

A Notary Public or other authorized notarial officer must take the written oath attesting to the accuracy of the transcript of the deposition. Members of the bar who are not also notarial officers may not take this oath because they are limited to taking oaths for oral testimony *only*.

RSA 456-B:3, IV, 517:7.

Certification of a Deposition

The certification of a deposition must include the following:

- The time and place of taking the deposition;
- The case and court in which the deposition is to be used;
- Whether the adverse party was present or not;
- Whether the adverse party was notified or not; and
- Whether the adverse party objected or not.

RSA 517:8.

Fees for Depositions

For services related to the taking of depositions, a Notary Public is entitled to a fee of at least five dollars but no more than fifty dollars. The Notary can vary the fee depending upon the amount the Notary feels is sufficient payment for the deposition services. In addition to the fee, a Notary is entitled to twenty cents per mile as mileage to swear witnesses.

RSA 517:19.

A NOTARY PUBLIC MAY NOT TAKE A DEPOSITION IN CERTAIN CIRCUMSTANCES.

A Notary Public cannot take a deposition if he or she:

- Is a party to the action;
- Is a relative, employee, or attorney of a party to the action;
- Has a financial interest in the action or its outcome;
- Has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome;
or
- Is employed by, or is an independent contractor working for, a person or entity which has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome.

RSA 517:3.

In addition to the above, Notaries who choose to do deposition work must familiarize themselves with the other statutes and rules governing depositions, including the remainder of RSA Chapter 517 entitled “Depositions.”

15.WITNESSING OR ATTESTING A SIGNATURE

Witnessing a signature is also referred to as attesting a signature. In order for a Notary Public to witness a signature, the person named in the document must appear before the Notary *and* sign the document in the Notary’s presence. The Notary’s certification provides evidence that the document was actually signed on the date of the certification. This is different from an acknowledgement, which may have been signed on a date prior to the person appearing before the Notary to acknowledge the signature.

As is required for all notarial acts, the Notary Public must confirm the identity of the person appearing before him or her. Before witnessing a signature, a Notary must determine that the person signing the document is the person named in the document. Please see IDENTITY OF THE PERSON SEEKING NOTARIZATION on page 7 for a complete description of the identification process. Also see the remote notarization section for a description of the tools and process for verifying the identity of a remotely located person.

RSA 456-B:2, III, VI.

Sample Certification for Witnessing or Attesting a Signature

State of New Hampshire County of _____
Signed or attested before me on the ____ day of _____, 20__ by _____ (name(s) of person(s)).
_____ (Signature of notarial officer)
(Seal, if any)
Notary Public, State of New Hampshire
My commission expires _____

RSA 456-B:8, IV.

16.CERTIFYING OR ATTESTING A COPY

Certifying a copy, also referred to as attesting a copy, is a notarial act in which a Notary Public, or other authorized official, certifies that a photocopy, or other type of copy, of a document is a true and accurate reproduction of the original document. In certifying or attesting a copy of a document, the Notary Public must determine that the copy is a full, true, and accurate transcription or reproduction of the document.

RSA 456-B:2, IV.

Document Copy Certification

To have a copy of a document certified, a person must appear before the Notary Public with the original document. The person may bring the copy to be certified, or make a copy in the Notary’s presence. In either case, the Notary must check the entire copy to be sure it is a full, true, and accurate reproduction of the original. Once the Notary has determined that the copy is accurate, the Notary can certify that the document is a true and accurate reproduction of the original. The Notary must use the copy certification jurat, it is not sufficient for the Notary Public simply to sign his or her name on the copy.

Sample Copy Certification Jurat

State of New Hampshire County of _____
I certify that this is a true and correct copy of a document in the possession of _____ (name of person).
Dated _____
_____ (Signature of notarial officer)
(Seal, if any)
Notary Public, State of New Hampshire
My commission expires _____

As a practical matter, for long or complex documents, it will typically be necessary for the copy to be made in the presence of the Notary using equipment the Notary reasonably believes makes accurate copies. Otherwise, it would be necessary to make a word for word comparison of the original to the copy before a Notary could certify that it is a true copy. Even where the Notary makes or personally witnesses a copy being made by standard copying equipment, the Notary should conduct a visual page-by-page comparison and inspection of each page to ensure that the copy is complete and accurate.

Documents that Cannot be Copy Certified

Vital records, apostille records, naturalization and citizenship certificates and recorded instruments cannot be copy certified. Individuals needing a certified copy of such documents must obtain additional certified copies from the issuing authority or an official authorized by law to provide certified copies of that specific document.

- *Vital Records*

A vital record is a certificate or report of a vital event. Vital events include, birth, adoption, death, fetal death, marriage, divorce, legal separation, and civil annulment. Pursuant to RSA 5-C:98, I, a vital record may not be “duplicated” or “notarized” by any persons other than the division of vital records or clerks of towns and cities. While the statute does not prohibit copying of vital records in the public domain, it does strictly prohibit anyone other than the state registrar or the clerks of cities and towns from certifying a copy of a vital record. RSA 5-C:98, II goes on to clearly state that “[c]ertified copies of vital records shall be issued to the public only by the state registrar or a clerk of a town or city in accordance with this chapter.”

RSA 5-C:1, XXXVI-VII, 5-C:98.

A NOTARY PUBLIC MUST NEVER CERTIFY A COPY OF A VITAL RECORD.

If a person requests a copy certification of a vital record, a Notary must refuse. RSA 5-C:98, III provides that a “written application for a certified copy of a vital record shall be made by mail or in person at the division or at the office of a clerk of a town or city.” The division of Vital Records Administration is located at 9 Ratification Way (formerly 71 South Fruit Street), Concord, New Hampshire 03301-2455, in the State Archives building. (603) 271-4650, vitalrecords@sos.nh.gov.

- *Apostille*

Notaries Public may not copy certify an apostille. An apostille is an official document that contains the certification as provided for in the 1961 Hague Convention as discussed above. It is important to note that a Notary may not copy certify a document *after* it receives an apostille.

RSA 5-C:99.

- *Naturalization and Citizenship Certificates*

A naturalization certificate is a document issued to an individual who obtains United States citizenship through the naturalization process. Federal and certain state courts issued such certificates until October 1, 1991 when the United States Citizenship and Immigration Service (USCIS) began issuing them. A citizenship certificate is a document USCIS issues to an individual who obtains United States citizenship other than through naturalization or birth in the United States.

See generally www.uscis.gov.

A NOTARY PUBLIC MAY NOT COPY CERTIFY A NATURALIZATION OR CITIZENSHIP CERTIFICATE.

Under federal law, only USCIS can copy certify a certificate of naturalization or citizenship. Such documents are referred to as “Certified True Copies.” In addition, only the United States

Attorney General and a clerk of court upon order of the court, can make certifications of naturalization and citizenship certificates or any part of the naturalization records of any court.

- ***Recordable Instruments***

Each county in New Hampshire has an elected official known as the register of deeds and maintains an office, usually at the county seat, where deeds and similar legal documents are recorded and available for public inspection. Recordable instruments are documents recorded at the registry of deeds as required by law. All deeds and other conveyances of real estate, all court orders, and certain other instruments affecting title to any interest in real estate are considered recordable instruments. Note that probate records and tax liens are exempt from recording by law. The register of deeds in each county is the only person with statutory authority to issue certified copies of instruments recorded at the registry of deeds. RSA 477:3-a, 478:4.

Item Copy Certification

In addition to document copy certification, the law on copy certification refers to the certifying or attesting a copy of “other” items. Examples of other items that could be copy certified include maps, diagrams, graphs, etc.

When copy certifying any item, the notarial officer must still determine that the copy is a full, true, and accurate transcription or reproduction. If the notary is unable to be certain that the copy is exactly the same as the original, he or she should refuse to make the certification. The National Notary Association recommends limiting copy certification of "other items" to those objects that may readily be photocopied.

Sample Copy Certification for a Document

State of New Hampshire

County of _____

I certify that this is a true and correct copy of a document in the possession of _____ (name of person).

Dated _____

(Signature of notarial officer)

(Seal, if any)

Notary Public, State of New Hampshire

My commission expires _____

RSA 456-B:8, V.

17. NOTING A PROTEST

A protest of a negotiable instrument is a written statement by a Notary Public that, “upon presentment, a negotiable instrument was neither paid nor accepted.”

Historically, banking relied almost completely on the process of “presenting” a bill of exchange, note, or order to a financial institution for payment. This involved actual presentation of a paper note or bill for payment. It is out of this process that the concepts of protest, dishonor, and noting a protest arose. When a person or financial institution presented a bill or note for payment and the payor refused to make the payment, the bill or note was said to be “dishonored.” In order to prove that a bill or note had been dishonored, a Notary Public would be required to “note the protest.”

Today, actual presentment rarely occurs. Under the Uniform Commercial Code (UCC), a protest is no longer necessary to establish liability for payment. As a result, the reasons for a Notary Public to note a protest have been all but eliminated. However, there are certain circumstances in modern commercial practice where noting a protest may be required. First, as noted in RSA 382-A section 3-505(a)(1), a document complying with RSA 382-A:3-505(b) that purports to be a protest is admissible in court and creates a presumption of dishonor. Second, the law in some countries requires protest in certain circumstances. For example, the law might require protest before going after drawers for drafts payable outside that country. While the concept of protest still exists for these limited purposes, it rarely comes up.

Evidence of Dishonor

When a person or party refuses to pay or accept a properly presented negotiable instrument, he or she is said to have “dishonored” it.

In New Hampshire, a Notary Public is required to determine whether there is evidence of dishonor before noting a protest. Section 3 of the UCC outlines the evidence a Notary Public must consider in determining whether he or she can note a protest. Specifically, pursuant to RSA 382-A:3-505, a Notary Public must determine whether any of the following evidence of dishonor exists:

- A certificate of dishonor made by a United States consul or vice consul, or a Notary Public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by non-acceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties;

- A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; or
- A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

If a Notary Public determines that any of the above three pieces of evidence exist, the Notary may “note the protest.” RSA 382-A:3-505 (b) states that:

A protest is a certificate of dishonor made by... a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

See the “Definitions” section for helpful definitions of terms used throughout the manual.

RSA 382-A:3-505, 456-B:2, V.

Protest as Evidence

The protest of a bill of exchange, note, or order, which a Notary Public has duly certified, is considered evidence of the facts stated in the protest and of the notice given to the drawer or endorsers.

RSA 455:4.

The National Notary Association strongly recommends that no notary perform a protest unless familiar with the procedures or under the direct supervision of an appropriately experienced attorney or bank officer.

18.SAFE DEPOSIT BOXES

In the State of New Hampshire, a Notary Public must be present for the opening of any safe deposit box opened due to unpaid rent or non-removal of contents after termination of the lease. State law permits the leasing depository bank to open a safe deposit box if:

- The rent has not been paid for at least 6 months or the renter has not removed the contents within 30 days from the termination of the lease for any reason other than for non-payment of rent;

- The depository bank has provided written notice to the person in whose name the safe deposit box is leased; and
- The rent is not paid within 60 days from the date of the notice and/or the contents are not removed.

A Notary Public *and* an officer of the bank must be present to open a safe deposit box.

A NOTARY PUBLIC PRESENT FOR THE OPENING OF A SAFE DEPOSIT BOX MUST NOT BE AN EMPLOYEE OF THE LEASING CORPORATION.

The role of the Notary Public at such an event is to:

- Remove the contents of the safe deposit box;
- Make a list of the contents;
- Seal up the contents in a package; and,
- Mark on the package the name and address of the person in whose name the safe deposit box was leased (this information should be taken from the books of the depository bank.)

In the presence of the Notary Public, the package must be placed in one of the storage vaults of the depository bank. The Notary Public must record, under official seal, the proceedings and the list of the contents of the safe deposit box. The depository bank must maintain that recording in written or electronic form.

RSA 383-B:5-501.

19.COMPETENCY TO ACT AS A NOTARY PUBLIC

Outlined below are special circumstances under which a Notary Public has specific statutory authority to act or, alternatively, there are specific statutory limitations on acting.

A Notary Public who is a Stockholder, Director, or Employee of a Bank or other Corporation.

Pursuant to statute, a Notary Public who is a stockholder, director, or employee of a bank or other corporation *may*:

- Take the acknowledgement of any party to any written instrument executed to or by the corporation;
- Administer an oath to any other stockholder, director, officer, employee, or agent of the corporation; and

- Protest for non-acceptance or nonpayment bills of exchange, drafts, checks, notes, or other negotiable instruments which may be owned or held for collection by the corporation.

Notaries Public *may not*:

- Take the acknowledgment of any party to any written instrument executed to or by the corporation of which the Notary is a stockholder, director, officer or employee, where the Notary or other officer is a party to the instrument, either individually or as representative of the corporation; or
- Protest any negotiable instrument owned or held for collection by the corporation, where the Notary or other officer is individually a party to the instrument.

RSA 455:2-a.

All Notaries Public

A NOTARY PUBLIC MUST NEVER NOTARIZE HIS OR HER OWN SIGNATURE.

While good practice would dictate that a Notary Public should not notarize his or her own signature, state statutes also expressly prohibit it.

RSA 455:2-a.

20.REAPPOINTMENT

The Secretary of State’s office mails reappointment applications to all Notaries Public about two months prior to the expiration of their five-year commission. These applications are also referred to as “renewals”. Notaries Public should notify the Secretary of State’s office of any address change during the five-year commission or they will not receive the application for reappointment automatically.

If a Notary Public does not receive a renewal application, he or she may request one via mail, phone, fax, or email:

Secretary of State’s Office
 State House, Room 204
 107 North Main Street
 Concord, NH 03301-4989
 (603) 271-3242 (phone)
 (603) 271-6316 (fax)
 elections@sos.nh.gov

The process and fees for reappointment are the same as for the initial appointment.

21. RESIDENCE REQUIRED

A person must be a resident of New Hampshire for appointment as a Notary Public. Once appointed, the Notary Public must maintain a primary residence in New Hampshire. If a Notary Public permanently moves his or her primary residence out-of-state during the five-year term, the Notary no longer has the authority of a New Hampshire Notary Public. Best practice is to submit a written notification of the move to the Secretary of State and destroy any stamp or seal possessed. If the person later moves back to New Hampshire and wishes to be a Notary Public, a new application and appointment is necessary.

The former notary must notify the Secretary of State of the location of the journal and video recordings of any remote notarizations. RSA 456-B:8, V. Most remote notarization service providers include ten years of storage of these records as part of their service. Best practice is to use one of those providers.

JUSTICES OF THE PEACE

Like Notaries Public, Justices of the Peace are public officials appointed by the Governor, with the advice and consent of the Executive Council. Justices of the Peace can perform all of the duties of Notaries Public, as well as powers fundamental to both our State and its citizens - issuing arrest warrants, and performing marriages. These additional duties give rise to additional eligibility requirements, such as having been a registered voter in New Hampshire for at least three years prior to applying.

Justices of the Peace have long held an important and respected position in New Hampshire history. The office of Justice of the Peace has existed since this State was established. The State's Constitution repeatedly mentions the role of the Justices of the Peace. While the official duties have changed over time, the importance of having persons of integrity fill the role of Justice of the Peace remains. For these reasons, the term of office for a Justice of the Peace is constitutionally limited to five years.

N.H. Constitution, Part II, Art. 75.

1. QUALIFICATIONS

A person applying to be a Justice of the Peace must:

- Be at least 21 years of age;
- Be a New Hampshire resident;
- Have been a registered voter in New Hampshire for at least three (3) years prior to the date of the application; and
- Be endorsed by two New Hampshire Justices of the Peace and a person registered to vote in New Hampshire.

The definition of resident, found at RSA 21:6, is: “a person who is domiciled or has a place of abode or both in this state and in any city, town, or other political subdivision of this state, and who has, through all of his or her actions, demonstrated a current intent to designate that place of abode as his or her principal place of physical presence to the exclusion of all others.”

The endorsement by two New Hampshire Justices of the Peace and a person registered to vote requires more than just the endorsers' signatures on the application. It requires that the endorser actually give his or her approval and support to the applicant. Such approval requires that the endorser, at a minimum, personally know the applicant and believe that he or she is of a character consistent with the honesty and integrity required of a Justice of the Peace.

In addition to the above qualifications, it is within the discretion of the Governor and Council to find particular criminal convictions as disqualifying. Given that all applicants are statutorily required to provide a criminal background by signing a written statement under oath regarding their criminal history, this information is relevant to the appointment process and may be taken into consideration by the Governor and Council during consideration of an application.

RSA 455-A:2.

The qualifications to become a Justice of the Peace differ from those required to become a Notary Public. Historically, both offices required that the applicant have been a registered voter in New Hampshire for at least three years immediately preceding the date of the application. In 1989, the Governor and Council requested that the New Hampshire Supreme Court consider the constitutionality of the registered voter requirement. The Supreme Court held that, because a Justice of the Peace has additional powers, the State has an increased interest in the individual's qualifications, which justify the registered voter requirement. The Court also reasoned that Notary Public applicants cannot be subject to the same registered voter requirement because they do not have these additional "judicial" functions.

Opinion of the Justices, 131 N.H. 433 (1989).

2. APPLICATION

The Secretary of State's office processes Justice of the Peace applications. In order to apply to become a Justice of the Peace, a person must complete the following steps:

- Obtain an application and criminal release form from the Secretary of State's office via mail, phone, fax, email or download at:

Secretary of State's Office
State House, Room 204
107 North Main Street
Concord, NH 03301-4989
(603) 271-3242 (phone)
(603) 271-6316 (fax)
elections@sos.nh.gov
<https://sos.nh.gov/administrtion>

- Complete the application and have it endorsed by two New Hampshire Justices of the Peace and a person registered to vote in New Hampshire. These should be individuals who know the applicant and are able to "endorse" the applicant's suitability to be entrusted with the authority of a Justice of the Peace.

- Sign a written statement under oath as to whether he or she has ever been convicted of a crime that was not annulled by a court, other than minor traffic violations.
- Pay a seventy-five dollar fee to the Secretary of State.

The applicant must mail or deliver the completed application, criminal record release form, and fee to the Secretary of State's office at the above address.

RSA 5:10.

APPLICANTS MUST NOT MAKE A FALSE REPRESENTATION ON THE APPLICATION.

A Justice of the Peace applicant must not:

- Negligently make a material false representation on the application to become a Justice of the Peace;
- Recklessly make a material false representation on the application to become a Justice of the Peace; or
- Purposefully or knowingly make a material false representation on the application form.

Any person who negligently or recklessly makes a material false representation on the application form is subject to a civil penalty of up to one thousand dollars *per violation*. Any person who purposefully or knowingly makes a material false representation on the application form is guilty of a class A misdemeanor.

455:A-2.

PLEASE ALSO REFER TO THE ETHICS AND UNLAWFUL ACTS SECTIONS BELOW.

3. APPOINTMENT

Historically, Justices of the Peace were considered judicial officers. The New Hampshire Constitution states that the Governor and Council must nominate and appoint all judicial officers, including Justices of the Peace, and that the nomination be made at least three days prior to the appointment. A majority of the Executive Council must approve the nomination.

Statutes now also outline the appointment process for Justices of the Peace, which is similar to the appointment of Notaries Public. As a result, the appointment procedures described below are essentially the same as the those for appointment of Notaries Public.

The Secretary of State's office submits completed applications to the Governor and Council for nomination. If, after review of the application and criminal record check results, the applicant is nominated to become a Justice of the Peace, the application is once again submitted by the

Secretary of State's office, to the Governor and Council, this time for appointment. The Governor, with the advice and consent of the Executive Council, then makes the appointment. This two-step process generally takes eight to ten weeks.

When a person has a criminal record in New Hampshire, the applicant is notified and provided with a copy of the State Police report. The applicant receives a letter advising that if the person still seeks appointment as a Justice of the Peace he or she must contact his or her Executive Councilor. The applicant must provide the Councilor with a copy of the record, and seek the Councilor's approval of the application moving forward for a vote. If the Councilor notifies the Secretary of State's Office that he or she approves, the nomination is moved forward for a vote to appoint at the next meeting. The list of proposed appointments has an asterisk (*) by the name of nominees in this circumstance.

A Justice of the Peace's commission begins on the date the Governor and Council confirms the appointment. The commission will indicate the appointment date.

Approximately one week after appointment, a newly appointed Justice of the Peace will receive his or her commission, oath of office and other information in the mail. The Justice of the Peace should review and keep the information provided. The oath and commission need further action as described below.

N.H. Constitution, Part II, Art. 46; RSA 455-A:1.

4. TERM

A Justice of the Peace's term lasts five years from the date of his or her appointment. This term limit is set forth in both statute and the New Hampshire Constitution. The Constitution emphasizes the importance of a Justice of the Peace's duties and provides insight into the reason for the term limit as follows:

“In order that the people may not suffer from the long continuance in place of any Justice of the Peace who shall fail in discharging the important duties of his office with ability and fidelity, all commissions of Justice of the Peace shall become void at the expiration of five years from their respective dates, and upon the expiration of any commission, the same may if necessary be renewed or another person appointed as shall most conduce to the well being of the state.”

N.H. Constitution, Part II, Art. 75; RSA 455-A:1.

5. OATH OF OFFICE AND COMMISSION

After receiving the oath of office and commission in the mail, a Justice of the Peace must complete the following steps.

- Sign and take the oath of office before the authorized officials listed below.
- Ensure that the person(s) who administer the oath sign and affix their official seal (stamp) to the oath and to the Justice of the Peace's Commission. Keep the signed commission for your records.
- Return the oath to the Secretary of State's office as soon as possible. Unless the oath is on file at the Secretary of State's office, the office cannot certify that you are qualified as a Justice of the Peace.

A PERSON CANNOT ACT AS A JUSTICE OF THE PEACE UNTIL HE OR SHE HAS TAKEN THE OATH OF OFFICE.

No person appointed to hold a public office where an oath is required, including Justices of the Peace, is permitted to exercise such office or perform any act of the office until he or she makes and subscribes the oath required by the New Hampshire Constitution.

RSA 92:2.

The following individuals may administer the official oath to a newly appointed Justice of the Peace: any two members of the New Hampshire Executive Council, any member of the New Hampshire Executive Council with a New Hampshire Justice of the Peace, any two New Hampshire Justices of the Peace, any New Hampshire Justice of the Peace with any New Hampshire Notary Public, or any two New Hampshire Notaries Public.

The New Hampshire Constitution prescribes the official oath of office for public officials as follows:

[I], A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as [a Justice of the Peace], according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.

The person taking the oath substitutes his or her name as it is written on the commission for “A.B.”

If an individual has a religious objection to taking an oath or is otherwise opposed to taking an oath, he or she may make an affirmation instead. For such persons, the New Hampshire Constitution provides that the Notary may alter the oath to omit the word “swear” and the words “[s]o help me God,” and, instead, to say: “This I do under the pains and penalties of perjury.” A person whose beliefs do not allow him or her to either swear or affirm faith and true allegiance to the United States of America and the State of New Hampshire is not entitled to hold the position of Justice of the Peace, an office of that government.

The oath of office is more than just ceremony and should be taken seriously. Any Justice of the Peace who violates his or her oath will be dismissed from office.

N.H. Constitution, Part II, Art. 84; RSA 92:5.

Applicability of Remote Notarization Law to Justices of the Peace.

Under RSA 456-B, Justices of the Peace, as notarial officers, have all the authority and responsibilities of Notaries Public. RSA 456-B also defines a “notarial officer” to include a Justice of the Peace and uses the defined term “notarial act” throughout. Additionally, Justices of the Peace are explicitly authorized by RSA 456-B:3 to perform notarial acts. Therefore, this manual construes the revised law to provide justices of the peace with authority to conduct remote notarization, subject to the same limitations and requirements applied to a notary public.

6. NO SEAL REQUIRED

Unlike a Notary Public, a Justice of the Peace is not required to have an official seal, whether in the form of either an embossed seal or an electronic stamp. However, if the Justice of the Peace opts to perform electronic and/or remote notarizations involving electronic records, the Justice of the Peace must use an X.509 (or similar industry-standard) compliant digital certificate. (See the Remote Notarization Section for further details.) When hand signing or electronically signing any document or instrument, it is good practice to type, print or otherwise affix:

- His or her name,
- The words “Justice of the Peace”; and
- The expiration date of his or her commission.

However, failure to meet these requirements does not invalidate the legal effect of a notarial act performed in person. Justices of the Peace who perform electronic and/or remote notarizations must use an X.509 (or similar industry-standard) compliant digital certificate, which is tamper resistant and capable of authentication. See further discussion below.

While state law permits Justices of the Peace to use a rubber stamp, it may not be sufficient for certain purposes. For example, federal passport regulations may require a raised seal. A Justice of the Peace should consider whether the rubber stamp is sufficient for each type of notarial act. If uncertain, the Justice of the Peace or the person signing should consult with the authority with whom the person signing will file the document. This is particularly important where the person signing will file the document internationally.

RSA 455-A:3.

7. FEES

Justices of the Peace are entitled to a fee of up to ten dollars for each oath, witness, service, or certification, with two exceptions. For depositions, a Justice is entitled to a fee of at least five dollars but no more than fifty dollars. The Justice can vary the fee depending upon the amount the Justice feels is sufficient payment for the services. A Justice may not charge a fee for administering and certifying oaths of office of town officers. Justices are entitled to a minimum fee of five dollars from those joined in marriage. A Justice of the Peace who performs a notarial act for a remotely located individual under RSA 456-B:6-a is entitled to a fee of twenty-five dollars per act. RSA 457:33; 517:19.

8. JOURNAL

A journal is required for all notarial acts performed with respect to a remotely located individual. For all other notarial acts, while not required by law, it is recommended that a Justice of the Peace performing notarial acts maintain a journal. Good practice would dictate including in the journal, at a minimum, the following information:

- (1) The notarial act performed;
- (2) The date of the notarial act;
- (3) The identifying information of the person appearing before the Justice of the Peace;
and
- (4) Any other details the Justice of the Peace believes would be useful in referring back to the act.

A journal will provide a record of the details of each notarial act that the Justice of the Peace can refer to if called upon to verify the act. RSA 456-B:8-c. See further discussion of journals for remote notarizations below.

Example of a paper journal:

OFFICIAL JOURNAL RECORD OF NOTARIAL ACT		TYPE OF NOTARIAL ACT	
DATE OF NOTARIZATION	TIME	AM/PM	<input type="checkbox"/> ACKNOWLEDGMENT ACT PERFORMED ELECTRONICALLY (Platform)
DATE OF DOCUMENT		<input type="checkbox"/> JURAT	
TYPE OF DOCUMENT		<input type="checkbox"/> SIGNATURE ACT PERFORMED REMOTELY (Platform)	
NO. OF DOCUMENTS		<input type="checkbox"/> CERTIFICATION COPY A/V File Location	
FEE \$		<input type="checkbox"/> OTHER _____	
SIGNER TO COMPLETE THIS SECTION			
SIGNATURE _____			
PRINTED NAME _____			
ADDRESS _____			
CITY/ST/ZIP _____			
		TYPE OF IDENTIFICATION	
<input type="checkbox"/> Personal Knowledge		<input type="checkbox"/> ID Document _____ (Type & Issuing Entity) Issue/Exp Date _____	
<input type="checkbox"/> Credible Witness Name _____ (Signature)			
<input type="checkbox"/> OTHER _____		(PKA, Credential Analysis, etc.)	
INCLUDE OTHER INFORMATION ON BACK			

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9. NAME CHANGE

A Justice of the Peace should notify the Secretary of State’s office any time his or her name changes during his or her five-year commission. When notifying the Secretary of State, the Justice of the Peace must include his or her former name, new name, and any change of address.

In addition, the Justice of the Peace should request a new commission reflecting his or her new name. The fee for a new commission is five dollars payable by cash or check to the Secretary of State’s Office.

If the Justice of the Peace is within 6 months of the end of his or her 5-year commission, the Secretary of State’s office practice is to permit the Justice of the Peace to continue to sign official documents using both the old and new names. For example, if Jane Smith changes her name to Jane Jones, she can sign as Jane (Smith) Jones rather than requesting a new commission.

10. ADDRESS CHANGE

A Justice of the Peace should notify the Secretary of State’s office of an address change during his or her 5-year commission. Failure to notify the Secretary of State’s office will result in the Justice of the Peace not receiving an application for reappointment.

11. POWERS AND DUTIES

Once commissioned, a Justice of the Peace has the power to perform a number of official acts for an in-person individual within the State of New Hampshire and with respect to both tangible and electronic records. In addition, a Justice of the Peace may perform defined notarial acts for a remotely located individual by means of communication technology. For further details on the procedures and requirements for performing both in-person electronic notarizations and remote notarizations, see the relevant Sections on these topics in this Manual.

Justices of the Peace have the power to:

- Administer oaths and affirmations
- Take verifications upon oath or affirmation
- Acknowledge instruments
- Witness or attest a signature
- Certify or attest a copy
- Note a protest of a negotiable instrument
- Take depositions
- Perform marriage ceremonies
- Issue warrants

RSA 5-C:41; 92:5; 455-A:3; 457:31; 516:4; 592-A:5, 592-A:8.

A Justice of the Peace is performing one of the listed acts, therefore, a Justice of the Peace may not sign a blank document or jurat. The Justice of the Peace must witness the act being notarized or performed, by witnessing the signature, or oath, or directly verifying the accuracy of a copy being certified, conducting the marriage or making a probable cause determination and issuing a warrant.

A NEW HAMPSHIRE JUSTICE OF THE PEACE MAY NOT PERFORM THESE OFFICIAL ACTS OUTSIDE OF THE STATE.

A notarial act is “performed” in the place where the Justice of the Peace is physically located at the time of the notarization. For traditional notarial acts the individual whose act is being notarized must be physically present in the same place as the Justice of the Peace. A Justice of the Peace who performs remote notarization may perform a notarial act for a remotely located individual who is elsewhere in New Hampshire, out-of-state, or out of the United States.

What if a person cannot sign his or her own name?

A Justice of the Peace may still perform a notarial act for a person who is unable to sign his or her name due to a physical disability or other inability to write. The Justice should make accommodations to allow a person with this type of disability to have a document notarized. The notarial laws define a “signature” as “a tangible symbol or an electronic signature that evidences the signing of a record.” RSA 456-B:1, XII. Other statutes provide additional guidance. For example, the Uniform Commercial Code (RSA 382-A:1-201) defines the word "signed" to include any symbol executed or adopted by a party with present intention to authenticate a

writing. It is best practice to permit the person to sign the document by marking an “X” or other symbol on the signature line. If the person is unable to make any mark at all, he or she may use a signature stamp. The Justice of the Peace should exercise considerable caution in making sure the signature, whether a symbol or stamp, is the true signature of the person before him or her. The Justice may want to have a witness present in such circumstances.

If another person needs to make the mark or signature for the signer, the Justice of the Peace should add a statement to the notarial certificate stating that this occurred. For example, if a Justice of the Peace is notarizing a document for John Doe, who is a quadriplegic, and Jane Doe, his wife, signs his name after he communicates to the Justice of the Peace his intent that the document be signed, the Justice could write: “Notarized in the presence of John Doe, who was unable to sign his name due to a disability. Mr. Doe communicated his intent to sign this document and his wife Jane Doe signed his name in my presence.”

12.ADMINISTERING AN OATH OR AFFIRMATION

A Justice of the Peace may administer oaths and affirmations. An oath is “a solemn declaration, accompanied by a swearing to God or a revered person or thing, that one’s statement is true or that one will be bound to a promise.” For example, “I, [name of declarant], do solemnly swear that [statement] is true, so help me God.” An affirmation is “a solemn pledge equivalent to an oath but without reference to a supreme being or to swearing....” If a person has a religious or other objection to taking an oath, he or she can make an affirmation instead. For such persons, the Justice may alter the oath to omit the word “swear” and replace it with the word “affirm” and to omit the words “[s]o help me God,” and, instead, to say: “This I do under the pains and penalties of perjury.” For example, “I, [name of declarant], do solemnly affirm, that [statement] is true, under the pains and penalties of perjury.”

The purpose of an oath or affirmation is simply “to ensure that the affiant consciously recognizes his [or her] legal obligation to tell the truth.” Therefore, no particular ceremony is necessary other than that the declarant hold up his or her right hand. The affiant must just “know [] that his statement is sworn and given under oath in the presence of an oathmaker.” RSA 516:19 allows that “any other form or ceremony may be used which the person to whom the oath is administered professes to believe more binding upon the conscience.” It is important to note that a Justice of the Peace must accommodate any person who, due to disability, cannot hold up his or her right hand, and may use any reasonable means of ensuring the person taking the oath understands the seriousness of the act.

Black’s Law Dictionary (11th ed. 2019), N.H. Constitution, Part II, Art. 84; RSA 455-A:3; RSA 516:19, 20; Appeal of State of New Hampshire, 144 N.H. 85, 89, (July 26, 1999).

a. SWEARING IN A WITNESS DURING COURT PROCEEDINGS

When swearing in a witness during court proceedings, a Justice of the Peace should request the witness to raise his or her right hand before making the oath. If the witness objects to raising his or her hand, he or she may use any other form or ceremony, as long as he or she “professes to believe [it] more binding upon the conscience.”

The oath generally used for swearing in a witness is:

Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

The language generally used for a witness making an affirmation rather than an oath is:

Please raise your right hand. Do you, under the pains and penalties of perjury, affirm to tell the truth, the whole truth and nothing but the truth?

RSA 516:19; 92:3.

Attorneys

In the State of New Hampshire, any person admitted to the practice of law in New Hampshire may administer an oath or affirmation as described above for taking oral testimony.

RSA 456-B:3, IV.

b. OATHS OF OFFICE FOR PUBLIC OFFICIALS

Persons appointed to hold public offices are statutorily required to take an official oath of office. No person chosen or appointed to any public office or to any position where an oath is required can exercise such office or position or perform any act therein until he or she has taken the oath. Any person who violates his or her oath will be dismissed from the office or position involved.

RSA 92:2.

Justices of the Peace May Administer Official Oaths.

Justices of the Peace may administer official oaths as follows:

- To the clerk of any court, by any two New Hampshire Justices of the Peace.
- To all military officers above the rank of field officers, and to all other officers appointed by the Governor and Council, by any member of the Council with a New Hampshire Justice of the Peace, or by any two New Hampshire Justices of the Peace, or by any New Hampshire Justice of the Peace with any New Hampshire Notary Public or by two New Hampshire Notaries Public.
- To all other officers, by any New Hampshire Justice of the Peace within his or her county.
- To town officers other than during town meeting, by a New Hampshire Justice of the Peace.

- To officers of school districts other than during school meeting, by a New Hampshire Justice of the Peace.

RSA 92:5.

Language of Official Oaths

The New Hampshire Constitution prescribes the oath a public official must take:

I, A.B. do solemnly swear, that I will bear faith and true allegiance to the United States of America and the state of New Hampshire, and will support the constitutions thereof. So help me God.

I, A.B. do solemnly and sincerely swear and affirm that I will faithfully and impartially discharge and perform all the duties incumbent on me as, according to the best of my abilities, agreeably to the rules and regulations of this constitution and laws of the state of New Hampshire. So help me God.

The name of the person taking the oath replaces "A.B." above and the office the person will perform fills the blank.

If a person does not wish to swear, the Justice may substitute "*affirm*" for "*swear*," and the words "[t]his I do under the pains and penalties of perjury," may be substituted for "[s]o help me God." Such affirmation shall, for all purposes, be and constitute an oath.

N.H. Constitution, Part II, Art. 84; RSA 92:3.

Ceremony Required for Official Oaths

The person taking the oath is required to hold up his or her right hand, unless unable to do so due to a disability. No other ceremony is necessary.

RSA 92:4.

Oaths are to be Administered in the Physical Presence of the Person Making the Oath

The individual taking the oath must be physically present with the Justice of the Peace administering the oath. If the law requires that the oath be taken in the presence of two officials, for example as is required for a Notary taking the oath as a Notary Public, both of the officials administering the oath must be physically present with the individual taking the oath.

Administering an oath and documenting the satisfactory swearing or affirming to the oath is a notarial act. The law authorizing a Justice of the Peace, who obtains the necessary tools and files their intent to perform remote notarization with the Secretary of State, does not exclude administering an oath from the acts that may be performed remotely. Therefore, if a Justice of

the Peace exercises this authority to administer an oath remotely, all oath administrations must be video recorded, with the video preserved for ten years.

A Notary is limited to being one of the two officials administering the oath of office to “military officers above the rank of field officers, and to all other officers appointed by the governor and council” A Justice of the Peace may also administer certain oaths of office to town, city, or school officers, but the authority to conduct remote notarization does not apply when the Justice is acting under authority limited to a Justice of the Peace, authority not shared with Notaries public.

Best practice is to administer oaths of office in person.

RSA 92:5.

Certification and Recording of Official Oaths

The person administering an official oath must sign and affix his or her official seal (stamp) to the oath and immediately return it to the recording officer of the body making the election or appointment.

The Secretary of State’s office records, among others, the following oaths: Notaries Public, Justices of the Peace, Commissioners of Deeds, the Attorney General, Deputy Attorney General, Assistant Attorneys General, State Representatives, State Senators, the Governor, all commissioners, board members, and department and division heads appointed by Governor and Council, Elected County Officers.

The town clerk records the oaths of any officials elected or appointed by the town.

The recording officer for the school district records, among others, the following oaths: Treasurer of the school board, and members of the school budget committee.

N.H. Constitution, Part II, Art. 84; RSA 42:8, 92:6.

c. TAKING A VERIFICATION UPON OATH OR AFFIRMATION

A verification upon oath or affirmation is a declaration under oath or affirmation in front of a Justice of the Peace (or other authorized official) that a written statement is true. A Justice of the Peace’s certification of that verification upon oath or affirmation is referred to as a jurat. A jurat is required anytime a person must swear to the truth of the contents of a document, such as for an affidavit and certain court documents. In executing a jurat, a Justice of the Peace is confirming that the person appeared before the Justice, took an oath or affirmation attesting to the truthfulness of the document, and signed the document in the Justice's presence.

An example of the wording that a Justice of the Peace may use in taking a verification upon oath or affirmation is “Do you solemnly swear that the contents of this [name of document] signed by you are true and correct, so help you God?” or “Do you swear and affirm under the pains and

penalties of perjury that the contents of this [name of document] signed by you are true and correct?

As with all notarial acts, it is very important that the Justice of the Peace identify the person making the verification upon oath or affirmation. The Justice of the Peace must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before him or her and making the verification is the person whose true signature is on the statement verified. Please see IDENTITY OF THE PERSON SEEKING NOTARIZATION on page 7 for a complete description of the identification process. Proper identification is especially important for verifications because the Justice of the Peace is certifying that the signer attested to the truthfulness of the document. Note that a jurat on a document does not prove that its contents are true, it simply establishes that the signer has sworn that the contents are true.

RSA 456-B:1, III, 456-B:2, II.

Sample Certification of a Verification Upon Oath or Affirmation (Jurat)

State of New Hampshire
County of _____

Signed and sworn to (or affirmed) before me on the ___ day of _____, 20__ by
_____ (name(s) of person(s) making statement).

(Signature of notarial officer)

(Seal, if any)

Justice of the Peace, State of New Hampshire

My commission expires _____

RSA 456-B:8, III.

13. TAKING AN ACKNOWLEDGEMENT

An acknowledgment is a declaration in front of a Justice of the Peace (or other authorized official) that the person has signed a document for the purposes stated in the document. The purpose of an acknowledgment is for the Justice of the Peace to confirm that the person making the acknowledgment is the person whose signature is on the document. Please see IDENTITY OF THE PERSON SEEKING NOTARIZATION on page 7 for a complete description of the identification process.

Acknowledgements are generally executed on deeds and other documents that are publicly recorded by a county official.

Note that the document may have been signed on a date prior to when the person is appearing before the Justice of the Peace to acknowledge the signature. This differs from witnessing a signature, which requires signing the document in the presence of the Justice of the Peace.

The difference between an acknowledgement and a verification upon oath or affirmation is that for an acknowledgement a person is swearing that he or she is the person who signed the document while for a verification, in addition to swearing that he or she signed the document, the person is swearing that the contents of the document are true.

RSA 456-B:1, II; RSA 456-B:2, I.

Acknowledgements - Individual or Representative Capacity

An acknowledgement may be made in an individual capacity or in a representative capacity. If an acknowledgement is made in an individual capacity, the person appearing before the Justice of the Peace is acknowledging the document and signature on his or her own behalf. When making an acknowledgement in a representative capacity, the person appearing before the Justice of the Peace is appearing on behalf of some other person or entity.

A person may be appearing in a representative capacity in one of the following four ways:

- For or on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;
- As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;
- As an attorney in fact for a principal; or
- In any other capacity as an authorized representative of another.

When a person makes an acknowledgement in a representative capacity, the person is declaring that he or she signed the instrument with proper authority, and executed it as the act of the person or entity represented and identified in the document. The Justice of the Peace must still determine the identity of the person appearing before him or her for such acknowledgements. The Justice of the Peace is certifying that the person represented him or herself to the Justice as having authority to act in the representative capacity. The Justice does not have a duty to determine if the person in fact and law does have authority to represent the other person or entity. The jurat establishes only that the representation was made, not that the authority to represent the other person or entity exists in fact and law.

One common form of representative capacity is a power of attorney. A power of attorney is a document that a person (commonly referred to as the "principal") completes and signs granting another person (the "agent") authority to manage some aspect of the principal's property, finances, or health, among other things. This power can be broad or general. When the agent is signing a document in his or her capacity as power of attorney, he or she will typically sign his or her own name followed by "power of attorney for" and the name of the principal. The Justice of the Peace must determine the identity of the person appearing before him or her (the agent), not the person being signed for (the principal). Best practice for a Justice of the Peace in notarizing a document for a person using a power of attorney would be to require the agent to provide a certified copy of the power of attorney document evidencing that the agent has the authority to acknowledge the document for the principal.

Attorneys will typically include a copy of the power of attorney if the notarized document is one recorded or filed with a court.

RSA 456-B:1, II;IV; 564-E.

Sample Procedure for Taking an Acknowledgement

The Justice of the Peace should request the signer to raise his or her right hand and ask, "Do you swear and acknowledge that the signing of this document is your voluntary act and deed?" The signer must give an affirmative response before the Justice of the Peace can complete the certification.

Certification of an Acknowledgement

After the Justice of the Peace is satisfied that the person appearing before him or her is the person whose signature is on the document, the Justice must complete a certification. In doing so, the Justice of the Peace certifies that the individual appeared before him or her on the date indicated and acknowledged the document in question. The certification is not part of the document, and does not affect its validity. The certification a Notary uses will vary depending upon whether the acknowledgement is made in an individual or representative capacity. Examples of each are provided below.

Sample Certification for an Acknowledgement Made in an Individual Capacity

State of New Hampshire
County of _____

This instrument was acknowledged before me on the ____ day of _____, 20__ by
_____ (name(s) of person(s)).

(Signature of notarial officer)

(Seal, if any)

Justice of the Peace, State of New Hampshire

My commission expires: _____

RSA 456-B:8, I.

Sample Certification for an Acknowledgement Made in a Representative Capacity

State of New Hampshire
County of _____

This instrument was acknowledged before me on the ____ day of _____, 20__ by
(name(s) of person(s)) as _____ (type of authority, e.g. officer, trustee, etc.)
of _____ (name of party on behalf of whom instrument was executed.)

(Signature of notarial officer)

(Seal, if any)

Justice of the Peace, State of New Hampshire

My commission expires: _____

RSA 456-B:8, II.

Taking an Acknowledgement for a Document That Needs an Apostille

Many countries require evidence that the signatures of public officials from other countries are authentic. Prior to the Hague Convention in 1961, all documents going from the United States to a foreign country had to be “legalized.” Essentially, legalization required the United States to have diplomatic or consular agents certify the authenticity of signatures, the capacity of the signer, and the identity of the seal or stamp on the document. The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents eliminated this cumbersome requirement and replaced it with a much simpler process that still ensured the legitimacy of the document. This simpler process is an apostille.

An apostille is a certification that a public official’s signature on a document is authentic. An apostille certifying a notarization by a New Hampshire public official can only be obtained from the Secretary of State’s office. However, before a document can receive an apostille from the Secretary of State’s office, it must have the original signature of a Notary Public or Justice of the Peace witnessing the signature of the public official. As a result, a Notary Public may be asked to take an acknowledgement of a document that will need an apostille. One common example is the requirement in many countries that the documents required for a United States citizen to adopt a child born in that country is notarized and that an apostille certify that the Notary’s signature is legitimate.

It is important to note that the apostille process established by the Hague Convention only applies to countries that have chosen to be parties to the Convention or that have since formally adopted the process. The Secretary of State keeps a list of the Members of the Hague Conference on Private International Law at <http://sos.nh.gov/>. Please see also <https://www.hcch.net/en/states/hcch-members>
RSA 5-C:99.

Getting an Apostille

Any document sent to a country that has adopted the apostille process must have an apostille on it. In New Hampshire, only the Secretary of State’s office can issue an apostille.

Under state law, a vital record with an apostille must contain the following:

- The signature of the state registrar or the clerk of the town or city;
- The notarized acknowledgement of the state registrar or clerk; and
- The acknowledgement of the document by the Secretary of State, including his signature and seal.

RSA 5-C:99.

BEFORE A DOCUMENT CAN RECEIVE AN APOSTILLE BY THE SECRETARY OF STATE’S OFFICE, IT MUST HAVE AN ORIGINAL NOTARY PUBLIC OR JUSTICE

OF THE PEACE SIGNATURE WITNESSING THE SIGNATURE OF PERSON SWEARING TO OR AFFIRMING THE DOCUMENT.

The Secretary of State cannot certify signatures of town and city clerks, county or state registrars or other state officials. The signatures must be those of a Notary Public or Justice of the Peace for the State of New Hampshire. If signed by a Notary, the Notary's seal must be on the document. When the Secretary of State's Office attaches the apostille, it is certifying that the signature of the Notary Public or Justice of the Peace, *not the person swearing to or affirming the document*, is authentic.

Fee for Apostille

The Secretary of State's office charges a ten dollar fee per certificate. The fee is payable by cash or check to the State of New Hampshire. In addition to the regular fee, there is an expedited fee to receive apostilles on ten or more documents the same day of the request. Currently, there is no expedited fee for less than ten documents. The expedited fee for ten to twenty documents is twenty-five dollars, for twenty to thirty documents is fifty dollars, and for thirty to forty documents is seventy-five dollars.

RSA 5:10.

A JUSTICE OF THE PEACE CANNOT COPY CERTIFY A DOCUMENT CONTAINING AN APOSTILLE.

Certifying a copy is a notarial act in which a notarial officer certifies that a copy of a document is a true and accurate reproduction of the original. Under New Hampshire law, an apostille is a vital record document and cannot be copy certified by a Notary Public or Justice of the Peace.

RSA 5-C:98-99.

14.DEPOSITIONS

A deposition is a written record of a witness's out-of-court testimony made for later use in court or for discovery purposes in a legal action. In New Hampshire, depositions occur before a Justice of the Peace, or other authorized notarial officer. Generally, the opposing party requests a deposition. The person being deposed is commonly referred to as the "deponent." The attorney requesting the deposition asks the deponent questions first. Questions from the attorney for the deponent usually follow. If there are multiple parties to the legal action, the attorneys for each party have the opportunity to question the deponent.

RSA 516:4, 517:2.

Notice of Deposition

A Justice of the Peace may issue a notice for witnesses to appear before that Justice, or any other Justice or Notary, to give depositions in any matter in which a deposition is lawful. A notice of

deposition must be in writing and must contain the day, hour, and location of the deposition. The Justice must sign the notice.

RSA 517:4.

Deposition Testimony is Given Under Oath

Prior to the start of the deposition, the deponent must take an oath or affirmation that his or her testimony will be truthful. The Justice of the Peace may administer this oath or affirmation in the same manner as one swears witness during court proceedings. The Justice of the Peace should request that the witness raise his or her right hand before making the oath or affirmation. If the witness objects to raising his or her hand, he or she may use any other form or ceremony, so long as he or she “professes to believe [it] more binding upon the conscience.”

RSA 516:19.

The oath generally used for swearing in a witness is:

Please raise your right hand. Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

The language generally used for a witness making an affirmation rather than an oath is:

Please raise your right hand. Do you, under the pains and penalties of perjury, affirm to tell the truth, the whole truth and nothing but the truth?

Since any person admitted to the practice of law in New Hampshire may administer an oath or affirmation for taking oral testimony, an attorney present at a deposition could also administer the oath or affirmation to the deponent.

RSA 456-B:3, IV.

Signing of the Deposition under Oath

After a deposition is taken and, if necessary, transcribed, the deponent generally reviews the deposition for accuracy. The deponent must then sign the deposition under oath attesting to the accuracy of the transcript. The language of such oath is required by law:

[C]ontains the truth, the whole truth and nothing but the truth relative to the cause for which it was taken.

A Justice of the Peace or other authorized notarial officer must take the written oath for the transcript of the deposition. Members of the bar who are not also notarial officers may not take this oath because their authority to take oaths is limited to oaths for oral testimony *only*.

RSA 456-B:3, IV, 517:7.

Certification of a Deposition

The certification of a deposition must include the following:

- The time and place of taking the deposition;
- The case and court in which the deposition is to be used;
- Whether the adverse party was present or not;
- Whether the adverse party was notified or not; and
- Whether the adverse party objected or not.

RSA 517:8.

Fees for Depositions

For services related to the taking of depositions, a Justice of the Peace is entitled to a fee of at least five dollars but no more than fifty dollars. The Justice of the Peace can vary the fee depending upon the amount the Justice of the Peace feels is sufficient payment for the deposition services. In addition to the fee, a Justice of the Peace is entitled to twenty cents per mile as mileage to swear witnesses.

RSA 517:19.

A JUSTICE OF THE PEACE MAY NOT TAKE A DEPOSITION IN CERTAIN CIRCUMSTANCES.

A Justice of the Peace cannot take a deposition if he or she:

- Is a party to the action;
- Is a relative, employee, or attorney of a party to the action;
- Has a financial interest in the action or its outcome;
- Has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome;
or
- Is employed by, or is an independent contractor working for, a person or entity which has entered into an arrangement to provide exclusive deposition transcribing or recording services for a person or entity which has a financial interest in the action or its outcome.

RSA 517:3.

In addition to the above, Justices of the Peace who choose to do deposition work must familiarize themselves with the other statutes and rules governing depositions, including the remainder of RSA Chapter 517 entitled “Depositions.”

15. WITNESSING OR ATTESTING A SIGNATURE

Witnessing a signature is also referred to as attesting a signature. In order for a Justice of the Peace to witness a signature, the person named in the document must appear before the Justice *and* sign the document in the Justice’s presence. The Justice’s certification provides evidence that the document was actually signed on the date of the certification. This is different from an acknowledgement, which may have been signed on a date prior to the person appearing before the Justice of the Peace to acknowledge the signature.

Prior to witnessing a signature and before making the certification, a Justice of the Peace must determine that the person signing the document is the person named in the document. Please see **IDENTITY OF THE PERSON SEEKING NOTARIZATION** on page 7 for a complete description of the identification process. Also see the remote notarization section for a description of the tools and process for verifying the identity of a remotely located person.

RSA 456-B:2, III, VI.

Sample Certification for Witnessing or Attesting a Signature

State of New Hampshire County of _____
Signed or attested before me on ____ day of _____, 20__ by _____ (name(s) of person(s)).
_____ (Signature of notarial officer)
(Seal, if any)
Justice of the Peace, State of New Hampshire
My commission expires _____

RSA 456-B:8, IV.

16.CERTIFYING OR ATTESTING A COPY

Certifying a copy, also referred to as attesting a copy, is a notarial act in which a Justice of the Peace or other authorized official certifies that a photocopy, or other type of copy, of a document is a true and accurate reproduction of the original document. In certifying or attesting a copy of a document, the Justice of the Peace must determine that the copy is a full, true, and accurate transcription or reproduction of the document.

RSA 456-B:2, IV.

Document Copy Certification

To have a copy of a document certified, a person must appear before the Justice of the Peace with the original document. The person may bring the copy to be certified, or make a copy in the Justice of the Peace's presence. In either case, the Justice of the Peace must check the entire copy to be sure it is a full, true, and accurate reproduction of the original. Once the Justice of the Peace has determined that the copy is accurate, he or she can certify that the document is a true and accurate reproduction of the original. The Justice must use the copy certification jurat, it is not sufficient for the Justice of the Peace simply to sign his or her name on the copy.

Sample Copy Certification Jurat

State of New Hampshire County of _____
I certify that this is a true and correct copy of a document in the possession of _____ (name of person).
Dated _____
_____ (Signature of notarial officer)
(Seal, if any)
Justice of the Peace, State of New Hampshire
My commission expires _____

As a practical matter, for long or complex documents, it will typically be necessary for the copy to be made in the presence of the Justice of the Peace using equipment the Justice reasonably believes makes accurate copies. Otherwise, it would be necessary to make a word for word comparison of the original to the copy before a Justice of the Peace could certify that it is a true copy. Even where the Justice of the Peace makes or personally witnesses a copy being made by

standard copying equipment, the Justice should conduct a visual page-by-page comparison and inspection of each page to ensure that the copy is complete and accurate.

Documents that Cannot be Copy Certified

Vital records, apostille records, naturalization and citizenship certificates and recorded instruments cannot be copy certified. Individuals needing a certified copy of such documents must obtain additional certified copies from the issuing authority or an official authorized by law to provide certified copies of the specific document.

- ***Vital Records***

A vital record is a certificate or report of a vital event. Vital events include, birth, adoption, death, fetal death, marriage, divorce, legal separation, and civil annulment. Pursuant to RSA 5-C:98, I, a vital record may not be “duplicated” or “notarized” by any persons other than the division of vital records or clerks of towns and cities. While the statute does not prohibit copying of vital records in the public domain, it does strictly prohibit anyone other than the state registrar or the clerks of cities and towns from ***certifying a copy*** of a vital record. RSA 5-C:98, II goes on to clearly state that “[c]ertified copies of vital records shall be issued to the public only by the state registrar or a clerk of a town or city in accordance with this chapter.”

RSA 5-C:1, XXXVI-VII, 5-C:98.

A JUSTICE OF THE PEACE MUST NEVER CERTIFY A COPY OF A VITAL RECORD.

If a person requests a copy certification of a vital record, a Justice of the Peace must refuse. RSA 5-C:98, III provides that a “written application for a certified copy of a vital record shall be made by mail or in person at the division or at the office of a clerk of a town or city.” The division of Vital Records Administration is located at 9 Ratification Way (formerly 71 South Fruit Street), Concord, New Hampshire 03301-2455, in the State Archives building. (603) 271-4650, vitalrecords@sos.nh.gov.

- ***Apostille***

Justices of the Peace may not copy certify an apostille. An apostille is an official document which contains the certification as provided for in the 1961 Hague Convention as discussed above. It is important to note that a Justice may not copy certify a document ***after*** it receives an apostille.

- ***Naturalization and Citizenship Certificates***

A naturalization certificate is a document issued to an individual who obtains United States citizenship through the naturalization process. Federal and certain state courts issued such certificates until October 1, 1991 when the United States Citizenship and Immigration Service (USCIS) began issuing them. A citizenship certificate is a document USCIS issues to an

individual who obtains United States citizenship other than through naturalization or birth in the United States.

See generally www.uscis.gov.

A JUSTICE OF THE PEACE MAY NOT COPY CERTIFY A NATURALIZATION OR CITIZENSHIP CERTIFICATE.

Under federal law, only USCIS officials can copy certify a certificate of naturalization or citizenship. Such documents are referred to as “Certified True Copies.” In addition, only the United States Attorney General and a clerk of court upon order of the court, can make certifications of naturalization and citizenship certificates or any part of the naturalization records of any court.

- ***Recordable Instruments***

Each county in New Hampshire has an elected official known as the register of deeds and maintains an office, usually at the county seat, where deeds and similar legal documents are recorded and available for public inspection. Recordable instruments are documents recorded at the registry of deeds as required by law. All deeds and other conveyances of real estate, all court orders, and certain other instruments affecting title to any interest in real estate are considered recordable instruments. Note that probate records and tax liens are exempt from recording by law. The register of deeds in each county is the only person with statutory authority to issue certified copies of documents recorded at the registry.

RSA 477:3-a, 478:4.

Item Copy Certification

In addition to document copy certification, the law on copy certification refers to the certifying or attesting a copy of “other” items. Examples of other items that could be copy certified include maps, diagrams, graphs, etc.

<p>When copy certifying any item, the notarial officer must still determine that the copy is a full, true, and accurate transcription or reproduction. If the Notary is unable to be certain that the copy is exactly the same as the original, he or she should refuse to make the certification. The National Notary Association recommends limiting copy certification of "other items" to those objects that may readily be photocopied.</p>
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Sample Document Copy Certification

State of New Hampshire County of _____
I certify that this is a true and correct copy of a document in the possession of _____ (name of person).
Dated _____
_____ (Signature of notarial officer)
(Seal, if any)
Justice of the Peace, State of New Hampshire
My commission expires _____

RSA 456-B:8, V.

17. NOTING A PROTEST

A protest of a negotiable instrument is a written statement by a Justice of the Peace or Notary Public that, “upon presentment, a negotiable instrument was neither paid nor accepted.”

Historically, banking relied almost completely on the process of “presenting” a bill of exchange, note, or order to a financial institution for payment. This involved actual presentation of a paper note or bill for payment. It is out of this process that the concepts of protest, dishonor, and noting a protest arose. When a person or financial institution presented a bill or note for payment and the payor refused to make the payment, the bill or note was said to be “dishonored.” In order to prove that a bill or note had been dishonored a notarial officer would be required to “note the protest.”

Today, actual presentment rarely occurs. Under the Uniform Commercial Code (UCC), a protest is no longer necessary to establish liability for payment. As a result, the reasons for a Justice of the Peace to note a protest have been all but eliminated. However, there are certain circumstances in modern commercial practice where noting a protest may be required. First, as noted in RSA 382-A section 3-505(a)(1), a document complying with RSA 382-A:3-505(b) that purports to be a protest is admissible in court and creates a presumption of dishonor. Second, the law in some countries requires protest in certain circumstances. For example, the law might

require protest before going after drawers for drafts payable outside that country. While the concept of protest still exists for these limited purposes, it rarely comes up.

Evidence of Dishonor

When a person or party refuses to pay or accept a properly presented negotiable instrument, he or she is said to have “dishonored” it.

In New Hampshire, a Justice of the Peace is required to determine whether there is evidence of dishonor before noting a protest. Section 3 of the UCC outlines the evidence a Justice of the Peace must consider in determining whether he or she can note a protest. Specifically, pursuant to RSA 382-A:3-505, a Justice of the Peace must determine whether any of the following evidence of dishonor exists:

- A certificate of dishonor made by a United States consul or vice consul, or a Notary Public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by non-acceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties;
- A purported stamp or writing of the drawee, payor bank, or presenting bank on or accompanying the instrument stating that acceptance or payment has been refused unless reasons for the refusal are stated and the reasons are not consistent with dishonor; or
- A book or record of the drawee, payor bank, or collecting bank, kept in the usual course of business which shows dishonor, even if there is no evidence of who made the entry.

If a Justice of the Peace determines that any of the above three pieces of evidence exist, he or she may “note the protest.” RSA 382-A:3-505 (b) states that:

A protest is a certificate of dishonor made by... a notary public or other person authorized to administer oaths by the law of the place where dishonor occurs. It may be made upon information satisfactory to that person. The protest must identify the instrument and certify either that presentment has been made or, if not made, the reason why it was not made, and that the instrument has been dishonored by nonacceptance or nonpayment. The protest may also certify that notice of dishonor has been given to some or all parties.

See the “Definitions” section for helpful definitions of terms used throughout the manual.

RSA 382-A:3-505, 456-B:2, V.

Protest as Evidence

The protest of a bill of exchange, note, or order, which a Justice of the Peace has duly certified, is considered evidence of the facts stated in the protest and of the notice given to the drawer or endorsers. RSA 455:4.

The National Notary Association strongly recommends that no Justice of the Peace perform a protest unless familiar with the procedures or under the direct supervision of an appropriately experienced attorney or bank officer.

18.MARRIAGE

In New Hampshire, Justices of the Peace may perform marriage ceremonies. In order to be married in this State, a couple is required to apply for a marriage license from the clerk of any town or city in the State. If granted, this license is valid for up to ninety days.

A JUSTICE OF THE PEACE MUST NEVER PERFORM A MARRIAGE CEREMONY WITHOUT HAVING FIRST RECEIVED THE MARRIAGE LICENSE.

Before joining any persons in marriage, a Justice of the Peace *must* receive the marriage license. The marriage license records that the marriage ceremony has taken place and who solemnized the marriage. No particular ceremony is required for a marriage in New Hampshire. The spouses and the Justice of the Peace who performs the ceremony complete the license. The spouses must review the information on the marriage license for completeness and accuracy *prior* to signing it.

The Justice of the Peace must record the following on the marriage license *after* the marriage has taken place:

- Certification that he or she is duly authorized to solemnize the marriage in accordance with RSA 457;
- His or her status as a Justice of the Peace commissioned by the State of New Hampshire, pursuant to RSA 457:31;
- The date of the marriage ceremony;
- The city, town or location and county where the couple were married;
- Certification that the spouses were married by the officiant in conformance with RSA 457 and that the information noted is correct to the best of his or her knowledge;
- The signature of the Justice of the Peace;
- The Justice's typed or printed name;
- The Justice's title and address; and

- An indication of whether the ceremony was religious or civil.
- The Justice of the Peace must then place his or her certification on the marriage license.

RSA 5-C:41.

A JUSTICE OF THE PEACE MAY NOT SERVE AS AN OFFICIANT AT HIS OR HER OWN MARRIAGE, AND MAY NOT CERTIFY HIS OR HER OWN MARRIAGE CERTIFICATE.

Reporting the Marriage Ceremony

A Justice of the Peace reports the fact that a marriage has taken place by forwarding the completed license to the clerk of the town or city that issued the license. Failure to report a marriage is a violation.

RSA 5-C:49.

THE COMPLETED LICENSE MUST BE MAILED OR DELIVERED BY THE JUSTICE OF THE PEACE TO THE CLERK WITHIN SIX DAYS OF THE CEREMONY.

A marriage license is considered filed on the date the clerk receives it. Upon receipt, the clerk dates and signs the marriage license and then forwards it to the division of vital records administration. The marriage license then becomes the official copy of the certificate of marriage.

A JUSTICE OF THE PEACE IS REQUIRED TO REPORT THE FACT THAT A MARRIAGE HAS TAKEN PLACE EVEN IF THE SPOUSES ASK HIM OR HER NOT TO.

RSA 5-C:49.

Penalty for Performing a Marriage Ceremony Without A Valid License

When a Justice of the Peace performs a marriage ceremony without having first received the marriage license, or performs a marriage ceremony after receiving a marriage license which the Justice of the Peace knows to be invalid, he or she faces a sixty dollar fine for each offense.

RSA 457:34.

Fee for Marriage

For solemnizing a marriage, a Justice of the Peace is entitled to a fee of at least five dollars from the persons joined in marriage.

RSA 457:33.

Declining Requests to Perform Marriages

A Justice of the Peace who chooses to perform opposite-sex marriages but declines to perform same-sex marriages should consult with his or her private legal counsel regarding his or her legal obligations under this statute.

Duty to Report Abuse

Justices of the Peace should note that state law requires individuals in certain professions as well as “any other person having reason to suspect that a child has been abused or neglected” to report certain required information to the New Hampshire Department of Health and Human Services. Anyone making a report of child abuse or neglect or participating in a resulting investigation or judicial proceeding is immune from civil or criminal liability that might otherwise result.

For more information on what to do if you suspect child abuse or neglect please visit the following link: <https://www.dhhs.nh.gov/dcyf/cps/stop.htm>.

RSA 169-C:29-31.

Similarly, anyone who suspects an adult has been subjected to abuse, neglect, self-neglect, or exploitation or is living in hazardous conditions shall report that information to the New Hampshire Department of Health and Human Services. State law grants immunity to individuals who make such reports in good faith.

RSA 161:F-46, 47.

For more information on what to do if you suspect adult abuse or neglect please visit the following link: <https://www.dhhs.nh.gov/dcbcs/beas/adultprotection.htm>.

In either case, if you cannot reach the Department, such reports can be made initially to law enforcement personnel.

19. ARREST WARRANTS

Historically, Justices of the Peace functioned both as judicial and notarial officers. Justices of the Peace could preside over certain judicial matters and, until the first half of the twentieth century, Justices of the Peace had the authority to issue search warrants as well as arrest warrants. Much of that judicial authority was eliminated. However, a remnant of the judicial function remains in the authority to issue arrest warrants. New Hampshire Justices of the Peace are authorized by RSA 592-A:5, RSA 592-A:8, and RSA 592-B:4 to issue arrest warrants for arrests related to any offense committed in any county.

Generally, when law enforcement officials want to make an arrest, they are legally required to obtain an arrest warrant. This requirement comes from Part I, Article 19 of the New Hampshire Constitution and the Fourth Amendment to the federal Constitution. In pertinent part, Part I, Article 19 of the New Hampshire Constitution provides that people have a right to be free from

unreasonable arrest. Therefore, all arrest warrants must be supported by oath or affirmation, include identification of the person to be arrested, and be issued only “in cases and with the formalities, prescribed by law.”

Consequently, arrest warrants are necessary to arrest someone in their home; to arrest someone for a misdemeanor that was not committed in the presence of a law enforcement officer; or to arrest someone for violation of a protective order if more than twelve hours have passed since the incident.

RSA 594:10 gives law enforcement officials limited authority to make warrantless arrests. Nonetheless, they will often seek a warrant simply because there is a judicial preference for a warrant. Additionally, if there is a challenge to probable cause, it is more likely to be upheld if the officer obtained a warrant.

Probable Cause is Required to Issue an Arrest Warrant

In order to issue an arrest warrant, a Justice of the Peace or other authorized magistrate must make a determination of probable cause. Generally, the law enforcement officer will bring the Justice of the Peace a sworn complaint, supporting affidavits signed under oath or affirmation, and an unsigned arrest warrant. The officer may also provide oral testimony under oath or affirmation. In making the determination of probable cause, the Justice of the Peace may consider the facts contained in the affidavits as well as any additional information the law enforcement officer provides.

It is very important that the Justice of the Peace document the oral testimony of the officer and attach it to the arrest warrant application. If oral testimony is not documented, and the validity of the arrest warrant is challenged in court, the reviewing judge will not have the benefit of that additional information which was considered in making the probable cause determination.

Probable cause to arrest exists “when the arresting officer has knowledge and trustworthy information sufficient to warrant a person of reasonable caution and prudence in believing that the arrestee has committed an offense.” State v. Jaroma, 137 N.H. 562, 567 (1993) (citations omitted). To establish probable cause one need only demonstrate the probability, and not a prima facie showing, of criminal activity.

To make a probable cause finding, a Justice of the Peace must also have knowledge of the criminal statute(s) involved. Consequently, along with the review of the affidavit, the Justice of the Peace should review the statutory definition of the crime. The arrest warrant application should identify the crime by name and statute number. The Justice of the Peace can then determine whether the information establishes probable cause to believe that the suspect committed or is committing acts that would amount to the alleged crime.

Neutral and Detached Magistrate

A Justice of the Peace should never issue an arrest warrant unless he or she can function as a neutral and detached magistrate. It is essential to the protection granted by the Fourth Amendment that the determination of probable cause be made “by a neutral and detached magistrate instead of being judged by the officer...” directly involved in the investigation of the crime. Johnson v. United States, 333 U.S. 10 (1947).

A Justice of the Peace should consider whether he or she has already formed an opinion about the issue, and whether he or she has any personal or business ties to the arrestee or others that might influence his or her decision. This determination is critical because a court may invalidate an arrest warrant if the Justice of the Peace is not considered neutral and detached.

Identification of the Individual to be Arrested

The arrest warrant must clearly identify the individual to be arrested. Name alone is sufficient identification.

To Whom Should the Warrant be Directed?

The Justice may direct the arrest warrant to the sheriff (or his or her deputy) of any county, or to any constable or police officer of any town in the state. Historically, there were Justices of the Peace who had authority throughout the state and those who had authority limited to a smaller area. This is why the statutes distinguish between Justices of the Peace “throughout the state” and “within a town or district.” Today, that distinction no longer exists. As a result, a Justice of the Peace may issue a warrant for the arrest of a person for any offense committed in any county in the state.

Where to Return the Arrest Warrant

Generally, the warrant is made returnable to a circuit or superior court. If the arrest warrant is for any offense committed in a town or city where there is a circuit court, the warrant must be made returnable to that court. Where a superior court already has jurisdiction over a matter, arrest warrants shall be made returnable to that court. In most cases, the law enforcement officer seeking the arrest warrant will know the court to which the warrant must be made returnable. If uncertain, a Justice of Peace should consult with the Clerk of Court for either the circuit or superior court.

Today, prosecutors bring arrested individuals before the superior or circuit court. Historically, arrest warrants required that the offender be brought to a district or municipal court; before a Justice of the Peace especially designated for trial or examination; or, in certain circumstances, before the issuing Justice of the Peace. Once again, this requirement comes from the historical authority a Justice of the Peace had to preside over hearings for certain offenses. Today a Justice of the Peace no longer has that jurisdiction and this provision in the statute is outdated.

RSA 490-F:3, 592-A:5, 8-10, 592-B:4, 5.

20.COMPETENCY TO ACT AS A JUSTICE OF THE PEACE

Outlined below are special circumstances under which a Justice of the Peace has specific statutory authority to act or, alternatively, there are specific statutory limitations on acting.

A Justice of the Peace who is a Stockholder, Director, or Employee of a Bank or other Corporation.

Pursuant to statute, a Justice of the Peace who is a stockholder, director, or employee of a bank or other corporation *may*:

- Take the acknowledgement of any party to any written instrument executed to or by the corporation;
- Administer an oath to any other stockholder, director, officer, employee, or agent of the corporation; and
- Protest for non-acceptance or nonpayment bills of exchange, drafts, checks, notes, or other negotiable instruments which may be owned or held for collection by the corporation.

Justices of the Peace *may not*:

- Take the acknowledgment of any party to any written instrument executed to or by the corporation of which the Justice of the Peace is a stockholder, director, officer or employee, where the Justice of the Peace or other officer is a party to the instrument, either individually or as representative of the corporation; or
- Protest any negotiable instrument owned or held for collection by the corporation, where the Justice of the Peace or other officer is individually a party to the instrument.

All Justices of the Peace

A JUSTICE OF THE PEACE MUST NEVER NOTARIZE HIS OR HER OWN SIGNATURE.

While good practice would dictate that a Justice of the Peace should not notarize his or her own signature, State statutes also expressly prohibit it.

RSA 455:2-a.

21.REAPPOINTMENT

The Secretary of State's office mails reappointment applications to all Justices of the Peace about two months prior to the expiration of his or her five-year commission. These applications are also referred to as "renewals". Justices of the Peace should notify the Secretary of State's office

of any address change during the five-year commission or they will not receive an application for reappointment automatically.

If a Justice of the Peace does not receive a renewal application, he or she may request one via mail, phone, fax, or email at:

Secretary of State's Office
State House, Room 204
107 North Main Street
Concord, NH 03301-4989
(603) 271-3242 (phone)
(603) 271-6316 (fax)
elections@sos.nh.gov

The process and fees for reappointment are the same as for the initial appointment.

22. RESIDENCE REQUIRED

A person must be a resident of New Hampshire for appointment as a Justice of the Peace. Once appointed the Justice of the Peace must maintain a primary residence in New Hampshire. If a Justice of the Peace permanently moves his or her primary residence out-of-state during the five-year term, the Justice no longer has the authority of a Justice of the Peace. Best practice is to submit a written notification of the move to the Secretary of State and destroy any stamp or seal possessed. If the person later moves back to New Hampshire and wishes to be a Justice of the Peace, a new application and appointment is necessary. The requirement that the applicant have been a registered voter for at least 3 years immediately preceding the date of application will apply.

The former Justice must notify the Secretary of State of the location of the journal and video recordings of any remote notarizations. RSA 456-B:8, V. Most remote notarization service providers include ten years of storage of these records as part of their service. Best practice is to use one of those providers.

COMMISSIONERS OF DEEDS

Commissioners of Deeds are public officials appointed by the Governor and Council or certain state courts. Because Commissioners perform many of the same duties as Notaries Public and Justices of the Peace, this manual briefly addresses their role and duties.

Please note that the Commissioners referred to in this section are distinct from the commissioners appointed by the courts to manage property that the court has taken control of and from those who are the executive heads of state departments.

1. COMMISSIONERS OF DEEDS APPOINTED BY THE GOVERNOR & EXECUTIVE COUNCIL

Commissioners are appointed to a five-year term. After appointment, a Commissioner must take and subscribe an oath before a Justice of some court of record that he or she will well and faithfully perform all the duties of the office. The Commissioner must file the oath with the New Hampshire Secretary of State's office within three months after it is taken.

There are two main differences between Commissioners and Justices of the Peace. First, Commissioners may not perform marriage ceremonies nor issue arrest warrants. Second, Commissioners may perform their duties both within and outside of New Hampshire.

Commissioner of Deeds may perform notarial acts for a remotely located individual by means of communication technology. For further details on the procedures and requirements for performing both in-person electronic notarizations and remote notarizations, see the relevant Sections on these topics in this Manual. In particular, when performing electronic and/or remote notarizations involving electronic records, the Commissioner of Deeds must use an X.509 (or similar industry-standard) compliant digital certificate. (See the Remote Notarization Section for further details.)

Commissioners' powers and duties, with respect to both tangible and electronic records, are as follows:

- Administer oaths;
- Take depositions and affidavits to be used in the State of New Hampshire and notify parties of the time and date thereof; and
- Take the acknowledgement of deeds or instruments to be used or recorded in this state.

Commissioners may exercise these powers "with the same effect as a [j]ustice of the [p]eace of this state may do within the state." With respect to electronic records, a Commissioner must affix an electronic signature.

Please see the detailed description above of the powers and duties of Justices of the Peace for more information. Note again that, unlike Justices of the Peace, Commissioners may not perform marriage ceremonies or issue arrest warrants.

RSA 455:12, 14.

2. COMMISSIONERS OF DEEDS APPOINTED BY THE COURTS

The supreme or superior court, or any justice thereof, may appoint Commissioners. Commissioners so appointed have the power to administer oaths and affirmations, to issue writs of summons to a witness, to proceed against a witness who fails to appear and give a deposition, and in all proceedings under his or her commission. A Commissioner may perform these acts with respect to both tangible and electronic records. With respect to electronic records, a Commissioner must affix an electronic signature.

RSA 455:15, 517:15, 17.

3. COMMISSIONERS FOR OTHER STATES

Other states may appoint Commissioners to act within the State of New Hampshire. Commissioners for other states may take depositions, administer oaths and affirmations and take the acknowledgment of deeds within this state, *to be used in their own state*. These Commissioners have the same power as Justices of the Peace in this state to administer oaths and affirmations, to issue writs of summons to a witness, to proceed against witnesses who fail to appear to give a deposition, and in all proceedings under his or her commission.

RSA 455:15.

4. UNLAWFUL ACTS

Commissioners have the same responsibilities as other notarial officers to perform their duties with integrity and honesty. The unlawful acts described above for both Notaries Public and Justices of the Peace are similarly unlawful for Commissioners. Please see the Unlawful Acts section below for a detailed description of unlawful acts and penalties.

ELECTRONIC NOTARIZATION

A notarial officer may perform notarial acts using an electronic signature and stamp. As with traditional notarizations, the electronic notarization demands in-person (i.e. physical) appearance, proper identification of the signer, completion of a notarial certificate, and completion of all other required steps depending on the type of notarial act. However, for an electronic notarization, the notary public is replacing the traditional wet-ink signature and notarization process with electronic signatures and an electronic stamp. This manual addresses remote notarization separately below.

Common types of electronic signatures used by document signers are typed names, digitized or scanned images of handwritten signatures, and digital signatures. However, New Hampshire notarial officers are required to sign by means of an X.509 (or similar industry-standard) compliant digital certificate, which the notary will need to obtain from a third-party provider. Typically, the notary public will also contract with an electronic document management and signing service. In addition, the notary public will need to be proficient in working with various document formats, such as pdf and doc.

Note that, while electronic journals are not required for in-person electronic notarizations, maintaining a journal of all notarial acts is best practice.

RSA 456-B:1; 456-B:2; 456-B:3

1. NOTIFICATION

The notarial officer shall notify the Secretary of State that the notarial officer intends to perform notarial acts with respect to electronic records. The notarial officer must inform the Secretary of State which technology the notarial officer intends to use, including the provider of the X.509 (or similar industry-standard) digital certificate. The Secretary of State created a notification form, which the notary public must submit to the Secretary of State prior to performing any electronic notarizations. The registration form can be found on the Secretary of State's website in the Administration section under Notary Public.

RSA 456-B:8-b

2. TAMPER-EVIDENT TECHNOLOGY

A notary public or justice of the peace must perform electronic notarial acts using tamper-evident technology. As a result, state law requires notaries and justices of the peace performing electronic notarization to possess a current and valid digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard

technology. A notary public or justice of the peace must identify the provider of the digital certificate acquired by the notary public or justice of the peace to the Secretary of State on the notice that the notarial officer will perform electronic notarial acts. A notary public or justice of the peace must attach the digital certificate along with the other required information and the notary's signature to an electronically notarized electronic record.

In compliance with the X.509 standard, a notary public or justice of the peace may not perform an electronic notarial act with respect to an electronic record if the digital certificate:

- has expired;
- has been revoked or terminated by the issuing or registering authority;
- is invalid; or
- is incapable of authentication.

A list of X.509 standard digital certificate providers accredited by the private non-profit standards body, Direct Trust, is available here: <https://directtrust.org/about-membership/member-list#dt-accredited-ca> (Accredited Certificate Authorities). You may find other digital certificate providers through referral by your remote notarization service provider or an internet search.

In addition to the X.509 standard, a notary public or justice of the peace may use a digital certificate that complies with a similar industry-standard technology. This means that a notary public or justice of the peace has the flexibility to use an additional technology to meet specific document security needs/requirements of a particular relying party or technology provider. However, note that a signer or a relying party may not require a notary public or justice of the peace to use a technology that the notary public or justice of the peace has not selected.

These standards apply to any electronic notarial act – whether conducted in-person or remotely.

RSA 456-B:8-b

Most authorities who issue digital certificates charge a significant annual fee. A notary considering engaging in electronic notarization should carefully evaluate the costs versus benefits.

3. CERTIFYING A TANGIBLE COPY OF AN ELECTRONIC RECORD

Notarial officers may now certify that a tangible copy of an electronic record is an accurate copy of the electronic record. See RSA 456-B:2,VI. The following is a best practice step-by-step process for certifying a tangible copy (i.e. a paper printout) of an electronic record:

1. The person requesting the notarial act must appear before the notarial officer, either in-person or by using communication technology;
2. Properly identify the person requesting the notarial act;
3. Record the details of the notarial act in journal;
4. Reasonably determine whether the electronic record has been tampered with or altered;

5. Personally print or supervise the printing of the electronic record onto paper or other tangible medium; and
6. Complete and sign the notarial certificate on or attached to the tangible record.

REMOTE NOTARIZATION

A notarial officer may perform a notarial act for a remotely located individual pertaining to either tangible (i.e. paper) or electronic records. The notarial officer must be physically present in New Hampshire and use communication technology that complies with state law. The most common remote notarial act is likely notarizing an electronic record. This act best takes advantage of the efficiency and security benefits of the emerging communication technologies. Remote notarizations are also referred to as ‘remote notarial acts,’ ‘remote online notarial acts,’ or ‘remote online notarizations.’

RSA 456-B:6-a

RSA 456-B:2, VII authorizes the use of audio/visual remote technology in the context of executing estate planning instruments only by a New Hampshire attorney who has drafted the estate planning instrument, that attorney’s associate, or paralegal. This authority exists within the context of an attorney-client relationship. This section does not apply the general requirements for remote notarization by a notarial officer to a notarial officer notarizing an estate planning instrument in this limited circumstance.

A notarial officer considering remote notarization should carefully evaluate the costs and benefits. Entities who issue digital certificates and those who provide identity proofing (discussed below) can charge significant fees. Remote notarization also requires audio-visual recording and preservation of such recording and related journal for ten years. Certain remote notarization service providers will perform these services, but will charge a fee. While it may be possible to satisfy the identity proofing, recording, and preservation requirements without using a remote notarization service, doing so will require the necessary equipment, technical knowhow, and wherewithal.

Remote notarization is typically most appropriate in higher volume applications where a business benefits from remote notarization and subsidizes some of the costs. Some Remote notarization service providers currently only provide services to such businesses and their notaries.

1. NOTIFICATION

The notary public shall notify the Secretary of State that the notary public intends to perform notarial acts facilitated by communication technology prior to performing any notarial acts. The notary public must inform the Secretary of State which communication technology and providers of identity proofing services the notary public intends to use. The Secretary of State created an online notification form, which the notary public must electronically sign using a digital certificate and submit to the Secretary of State prior to performing any remote notarizations.

RSA 456-B:6-a,VII

Communication technology and identity proofing service providers must meet the following requirements in order to do business in New Hampshire:

- 1) Demonstrate good standing as a registered Foreign Corporation in New Hampshire. RSA 293-A:15.01 provides that “a foreign corporation may not transact business in this state until it obtains a certificate of authority from the secretary of state. Information is available online: <https://quickstart.sos.nh.gov/online/Account/LandingPage> ;and
- 2) Complete the “New Hampshire eNotarization and/or Remote Notarization Technology Provider” form which requires the provider self-certify compliance with New Hampshire’s remote notarization law, including requiring a notary to have a digital certificate that satisfies the X.509 digital certificate standards. A list of communication technology and identity proofing service providers, who have submitted complete forms will be available on the Secretary of State’s website.

The Secretary of State recommends notarial officers use and remote notarization providers require digital certificates that are accredited by Direct Trust, <https://directtrust.org/who-we-are>, or some equivalent mechanism for ensuring the cybersecurity and standards of the digital certificate provider. Direct Trust’s web site lists accredited digital certificate providers: <https://directtrust.org/about-membership/member-list#dt-accredited-ca> (Accredited Certificate Authorities).

2. TAMPER-EVIDENT TECHNOLOGY

A notary public or justice of the peace must perform electronic notarial acts using tamper-evident technology. As a result, state law requires notaries and justices performing electronic notarial acts to possess a current and valid digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology. A notary public or justice of the peace must identify the provider of the digital certificate acquired by the notary public or justice of the peace to the Secretary of State on the notice that the notarial officer will perform electronic notarial acts. A notary public or justice of the peace must attach the digital certificate along with the other required information and the notary’s or justice’s signature to an electronically notarized electronic record.

In compliance with the X.509 standard, a notary public may not perform a notarial act with respect to an electronic record if the digital certificate:

- has expired;
- has been revoked or terminated by the issuing or registering authority;
- is invalid; or
- is incapable of authentication.

A list of X.509 standard digital certificate providers accredited by the private non-profit standards body, Direct Trust, is available here: <https://directtrust.org/about-membership/member-list#dt-accredited-ca> (Accredited Certificate Authorities). You may find other digital certificate providers through referral by your remote notarization service provider or an internet search.

To meet the needs of various relying parties, a Notary Public or Justice of the Peace may use additional tamper-evident technologies to perform notarial acts with respect to electronic records. This means that, in addition to the X.509 digital certificate, a Notary Public or Justice of the

Peace has the flexibility to use an additional technology to meet specific document security needs/requirements of a particular relying party or technology provider.

3. NOTARIAL CERTIFICATE

A notarial certificate must indicate that the notarial act involved was performed using communication technology. The following statement will suffice: “This notarial act involved the use of communication technology.”

RSA 456-B:6-a, V (b).

4. JOURNAL

It is best practice to maintain a journal of all notarial acts whether in-person or remote. Additionally, New Hampshire law *requires* that notarial officers keep a journal for all remote notarial acts. A journal may be created on a tangible medium (on paper) or in an electronic format. A notary public shall maintain only one journal at a time to chronicle all notarial acts performed regarding tangible records, and one or more journals to chronicle all notarial acts performed regarding electronic records. If the journal is maintained on a tangible medium, the journal must be a permanent, bound register with numbered pages. If the journal is maintained in an electronic format, the journal must be in a permanent, tamper-evident electronic format that complies with the law and any regulations adopted by the Secretary of State.

Remote notarization service providers include electronic journal services. Most providers offer storage for at least ten years as part of their basic fee. Best practice is to use a remote notarization service provider who will fulfill the statutory requirements for remote notarization.

Notarial officers shall make journal entries contemporaneously with performance of the notarial act. The journal shall contain the following information:

- The date and time the notarial act was performed;
- A description of the record, if any, and type of notarial act;
- The full name and address of each individual for whom the notarial act is performed;
- If the identity of the individual is based on personal knowledge, a statement to that effect;
- If the identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of any identification credential, and the identification number associated with the identification credential; (e.g. driver’s license number, etc.); and
- The fee, if any, charged by the notary public, if no fee is charged, the record should indicate no fee.

Example of electronic journal entries:

Completed At	Other Notes	Video Room SID	KBA Passed	Credential Analysis	ID Type	Credible Witness	Personally Known	First Name	Middle Name	Last Name	Address	City	State	Zip	Document Description	Notarization Type	Notarization Fee
6/16/2021, 9:57:27 PM	Closing attorney present	RM1234567891bs37d				Bob Smith		John		Doe	12 Main St	Manchester	NH	03101	Deed	Ack	
6/25/2021, 6:59:01 PM	Tangible record	RM123456789f273cb	YES	YES	DRIVERS LICENSE			Jane	Ann	Smith	46 Main St	Manchester	NH	03101	Affidavit	Jurat	
7/14/2021, 3:57:04 PM	French speaker	RM4924ff2dsdvnv27	YES	YES	DRIVERS LICENSE			Jim		Doe	100 Elm St	Manchester	NH	03101	POA	Ack	
7/20/2021, 1:08:15 PM		RMhusch23rfsffsd3x					YES	Alice		Jones	76 Elm St	Manchester	NH	03101	POA	Ack	
7/27/2021, 3:38:30 PM		RM2bd37770ba5f1c4	YES	YES	DRIVERS LICENSE			Mike	Richard	Smith	37 Main St	Manchester	NH	03101	Deed	Ack	
9/27/2021, 12:43:43 PM	Closing attorney present	RM2ace80965373b3a	YES	YES	DRIVERS LICENSE			James	George	Smith	98 Elm St	Manchester	NH	03101	Deed	Ack	

Every journal documenting remote notarizations shall be retained for a period of at least 10 years after the performance of the last notarial act to be chronicled.

If a notary public's journal is lost (including loss of access) or stolen, the notary public shall promptly notify the Secretary of State upon discovery.

RSA 456-B:8-c.

5. JOURNAL REPOSITORY

A notary public maintaining an electronic journal may, by written contract, engage a third-party to act as a repository to provide the storage required for the ten year minimum. If a notary public engages with a third-party to be a repository, the contract shall:

- enable the notary public to comply with the journal retention requirements of the law even if the contract is terminated; or
- provide that the journal will be transferred to the notary public if the contract is terminated.

A third-party under contract with a notary public that in the provider's contract explicitly meets the minimum storage requirements established in RSA Chapter 456-B shall be deemed a repository approved by the Secretary of State.

On the resignation from, or the revocation or suspension of, a notary public's commission, the notary public shall:

- retain the notary public's journal as explained above; and
- inform the Secretary of State where the journal is located.

On the death or adjudication of incompetency of a current or former notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the journal shall a) retain the journal as explained above or b) transmit it to a repository approved by the Secretary of State.

6. IDENTITY OF THE PERSON SEEKING NOTARIZATION

As with in-person notarial acts, a notarial officer must verify the identity of the individual appearing before him or her. A notary public has satisfactory evidence of the identity of a

remotely located individual if the notary public has personal knowledge of the individual or if the notary public has satisfactory evidence of the identity of the individual by oath or affirmation of a credible witness. A credible witness may be a remotely located individual if the notary public, credible witness, and the individual whose statement is the subject of the notarial act can communicate by using communication technology. A remotely located credible witness must meet the same requirements of the identity proofing process unless the notary public has personal knowledge of the remotely located credible witness.

If the notary cannot identify the individual through either of the above means, the notary may obtain satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing. Identity proofing is a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

RSA 456-B:6-a,I; 456-B:6-a,III.

In order to comply with state law (see RSA 456-B:6-a, X), identity proofing and credential analysis shall be performed by a reputable third party who has provided evidence to the notarial officer of the ability to satisfy the requirements of the law. Typically, the same communication technology provider a notarial officer is using to perform the remote notarization will also offer identity proofing services (often through integration with a specific provider). Both the communication technology provider and the identity proofing service providers must comply with the remote notarization standards (dated August 28, 2019) issued by the Mortgage Industry Standards Maintenance Organization (MISMO). (The complete MISMO Remote Online Notarization Standards are provided as Appendix C to this manual.)

In accordance with the MISMO standards, credential analysis must use public or private data sources to confirm the validity of an identification credential presented by a remotely located individual and shall, at a minimum:

- use automated software processes to aid the notary public in verifying the identity of each remotely located individual;
- ensure that the identification 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;
- use appropriate technologies to confirm that the identification credential is not fraudulent or inappropriately modified;
- use information held or published by the issuing source or an authoritative source, as available, to confirm the validity of personal details and identification credential details;
- provide output of the authenticity test to the notary public; and

- enable the notary public to visually compare the consistency of information and photo on the identification credential and the remotely located individual as viewed by the notary public in real-time through communication technology.

In accordance with the MISMO standards, identity proofing shall be performed through a dynamic knowledge-based authentication that meets the following requirements:

- each remotely located individual must answer a minimum of five questions related to the individual's personal history or identity, formulated from public or private data sources;
- each question must have a minimum of five possible answer choices;
- at least 80% of the questions must be answered correctly;
- all questions must be answered within 2 minutes;
- if the remotely located individual fails the first attempt, the individual may retake the quiz one time within 24 hours;
- during a retake of the questions, a minimum of 40% of the prior questions must be replaced;
- if the remotely located individual fails the second attempt, the individual is not allowed to retry with the same notary public within 24 hours of the second failed attempt; and
- the notary public must not be able to see or record the questions or answers.

If a remotely located individual must exit the signing session, the remotely located individual must restart credential analysis and identity proofing from the beginning.

7. COMMUNICATION TECHNOLOGY

The communication technology chosen for remote notarization must:

- Provide synchronous audio-visual feeds of sufficient video resolution and audio clarity to enable the notary public and remotely located individual to see and speak with each other. RSA 456-B:6-a,I.
- Facilitate communication with a remotely located individual who has a vision, hearing, or speech impairment. RSA 456-B:6-a,I.
- Provide a means for the notary public reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature. RSA 456-B:6-a, III(b).

Best Practice is to have technology that will:

- Provide reasonable security measures to prevent unauthorized access to the live transmission of the audio-visual feeds, the methods used to perform the identity proofing process, and the electronic record that is the subject of the notarial act.
- Protect access to the technology by use of at least one factor of user authentication such as a password, token, biometric or other form of commercially reasonable authentication.

Note that a telephone or simple FaceTime call is not a lawful means of performing a remote notarization.

8. AUDIO-VISUAL RECORDING REQUIREMENTS

Notarial officers (or a person acting on their behalf) are required to create an audio-visual recording of the performance of all remote notarial acts. A notarial officer (or his or her guardian, conservator, or agent, or a personal representative of a deceased notary public) must then retain the audio-visual recording; or cause the audio-visual recording to be retained by a repository designated by or on behalf of the person required to retain the recording. An audio-visual recording created for a remote notarization shall be retained for a period of at least 10 years after the recording is made.

A notary public may, by written contract, engage a third party to act as a repository to provide the required storage. If a notary does engage in a contract with a third party, the contract shall:

- Enable the notary public to comply with the 10-year retention requirement even if the contract is terminated; or
- Provide that the information will be transferred to the notary public if the contract is terminated.

RSA 456-B:6-a,III(c); 456-B:6,VI.

9. TANGIBLE RECORDS

Remote notarizations may be performed with tangible (i.e. paper) records. This may be necessary in situations where an entity requires wet-ink notarial signatures and notarial seal. This is often the case for documents being sent outside the United States. Remote notarization of tangible records can be performed in one of three scenarios.

In the first scenario, a signer affixes a wet-ink signature to a paper document that is physically sent to the notary public, who then obtains the signer's acknowledgment by use of an audio-visual session that meets all of the identification, recording, and journal requirements for a remote notarization. Then the notary also wet-signs and stamps the paper document.

In the second scenario, the signer affixes a wet-ink signature to a paper document and then scans and electronically sends it to the notary public, who subsequently prints out the wet-ink signature

signed document. The notary public then obtains the signer's acknowledgment by use of an audio-visual session that meets all identification, recording, and journal requirements for remote notarization. But, the notary also wet-signs and physically stamps the paper document. The notarized paper document is then physically delivered or mailed back to the signer or to a third party as directed by the signer. Best practice is for the notary to also scan the notarized document and send a PDF to the signer.

An acknowledgement is necessary because to notarize a directly witnessed signature, the notarial officer must be absolutely certain the document being notarized is the document the notarial officer witnessed being signed. This occurs naturally with an in-person, in physical presence, notarization. If the document must be mailed or otherwise delivered to the notarial officer, the notarial officer will be unable to attest that the document received is the very document that the notarial officer witnesses being signed remotely.

10.REMOTE NOTARIZATION PRINCIPLES AND PRACTICE TIPS

Remote notarization consists of six basic principles:

- 1) “personal appearance” of a signer before a notary public using audio and visual communications technology as an alternative to traditional physical presence,
- 2) required use by the notary public of a means that renders the electronic document tamper-evident,
- 3) the notary public's physical presence in New Hampshire when performing the remote notarizations,
- 4) ability of the signer to be physically located outside of New Hampshire or the United States,
- 5) ability to identify the signer using third party proofing, and
- 6) the notary public must make and retain for ten years a recording of the audio-video remote notarization session.

When first approaching the practice of remote notarization, a notary public should research the technology providers listed on the Secretary of State's website who have self-certified as having registered to do business in New Hampshire and complying with New Hampshire law.

A best practice is to treat a remote notarization session as being much like a video deposition that might be used in court. Therefore, the notary public should be prepared to make sure the recording captures all required questions and answers and other identification information.

Remember, a telephone or simple FaceTime call is not a lawful means of performing a remote notarization.

MILITARY OATHS AND NOTARIAL ACTS

New Hampshire authorizes certain members of the military to perform notarial acts as follows:

Commissioned and warrant officers of the New Hampshire National Guard and state guard have the power to administer oaths. Statutes strictly limit this power for the administration of military justice and for other purposes of military administration.

Commissioned and warrant officers of the armed forces of the United States, in addition to those named above, may administer enlistment oaths to those enlisting or re-enlisting in the New Hampshire National Guard.

Judge advocates and paralegals, serving in the militia, have the general powers of a Notary Public in the performance of all notarial acts to be executed by any member of the militia or United States armed forces and other persons eligible for legal assistance services by law or regulation.

RSA 110-B:64, I.

Signature and Title as Evidence

The signature of the military person acting as a Notary, together with the title of that person's office, is prima facie evidence that the signature is genuine, that the person holds the designated title, and that the person is authorized to perform a notarial act. RSA 110-B:64, II.

Statutory Form for Notarizations by Members of the Military

Notarizations or acknowledgments performed by members of the military pursuant to RSA 110-B:64 should follow the form below:

I, (name of military official), certify that the foregoing instrument was subscribed and (sworn)(affirmed) before me this (day of the month) day of (month), (year) by (name of person making statement), (Armed Forces service number/SSN), and who is known to me to be (a member of the New Hampshire national guard) (the spouse of a national guard member).

NOTARIZATIONS BY MEMBERS OF THE MILITARY PURSUANT TO RSA 110-B:64 ARE NOT REQUIRED TO BE UNDER OFFICIAL SEAL.

Fee

Members of the military acting pursuant to the grant of authority in RSA 110-B:64 are not entitled to any fee for the performance of notarial acts.

RSA 110-B:64, II.

ETHICS

As public officials/servants it is very important that notarial officers be persons of integrity and honesty. A notarial officer must be very cautious to perform his or her duties as required by the law.

See the Competency to Act as a Notary Public/Justice of the Peace sections above for a detailed description of additional statutes prohibiting certain relationships.

Conflicts of Interest

All notarial officers addressed in this manual have both a statutory and common law duty to avoid conflicts of interest in the performance of their duties. A conflict of interest is “a real or seeming incompatibility between one’s private interests and one’s public or fiduciary duties.” For example, state law prohibits Notaries Public from taking a deposition in a lawsuit if a relative is a party to the action, or if he or she has a financial interest in the outcome. In just such a case, the New Hampshire Supreme Court found that a conflict of interest existed where a deposition occurred before a Justice of the Peace who was the uncle of the plaintiff in the related litigation. The conflict of interest prevented the use of the deposition at the trial.

Black’s Law Dictionary (11th ed. 2019).

For public officials, like notarial officers, who do not serve the state on a full-time basis, the courts have recognized that the public office may only be a limited part of the official’s life. As a result, to constitute a conflict of interest, the pecuniary interest must be immediate, definite, and capable of demonstration. In general, a public official must never act in his or her own interest in performing official acts; official acts must always be solely in the interest of the public.

To the observer, such relationships create doubt as to the integrity of the act. By forbidding conflicts of interest, the statutes and common law seek to eliminate any doubt about the integrity of notarial acts.

Bribery

Statutes also explicitly prohibit public servants (such as notarial officers) from soliciting, accepting, or agreeing to accept a bribe. A bribe is any pecuniary benefit promised, offered or given “to another with the purpose of influencing the [public servant’s] action, decision, opinion, recommendation, vote, nomination, or other exercise of discretion....” A pecuniary benefit means “any advantage in the form of money, property, commercial interest or anything else, the primary significance of which is economic gain.”

A PUBLIC OFFICIAL WHO, SOLICITS, ACCEPTS, OR AGREES TO ACCEPT A BRIBE, OR FAILS TO REPORT TO A LAW ENFORCEMENT OFFICER THAT HE OR SHE HAS BEEN OFFERED A BRIBE IS GUILTY OF A CLASS B FELONY PUNISHABLE BY UP TO 7 YEARS IN PRISON.

See generally RSA 640:2.

Improper Influence

Public servants must also be free from improper influence. State law requires public servants to report to a law enforcement officer any conduct by another designed to improperly influence the notarial officer. Such conduct includes threats of harm and private addresses to the public official. The statutory meaning of “harm” includes “any disadvantage or injury, to person or property or pecuniary interest, including disadvantage or injury to any other person or entity in whose welfare the public servant... is interested.” However, harm does not include “the exercise of any conduct protected under the First Amendment to the United States Constitution or any provision of the federal or state constitutions.” Failure to report such conduct to law enforcement is also a class B felony.

See generally RSA 640:3.

Compensation for Past Action, Gifts to Public Servants, Compensation for Services

The law also expressly forbids a public servant from accepting compensation even for a *past* official action. A public servant is guilty of a misdemeanor if he or she “solicits, accepts or agrees to accept any pecuniary benefit in return for having given a decision, opinion, recommendation, nomination, vote, otherwise exercised his discretion, or for having violated his [or her] discretion, or for having violated his [or her] duty.” In other words, even if the pecuniary benefit is not given, sought, or even suggested until *after* the official act is completed, a notarial officer is still forbidden from accepting it. Note that this does not prevent a Notary Public, Justice of the Peace, or Commissioner of Deeds from accepting fees for notarial acts, performing marriages, or other acts for which fees are authorized by statute.

Similarly, public servants are guilty of a misdemeanor if they solicit, accept or agree to accept a gift from a person who is likely, in the *future* to become “subject to or interested in any matter or action pending before or contemplated by himself [or herself]...” or if they give advice or other assistance regarding a matter or transaction they have or likely will have official discretion to exercise.

See generally RSA 640:4, 5 and 6.

Purchase of Public Office

Finally, no public servant may solicit, accept, or agree to accept (for him or herself or another person or political party) money or any other pecuniary benefit as compensation for his or her endorsement of any person for a position as a public servant. This provision is particularly applicable to notarial officers, who may be asked to endorse an applicant to be a Notary Public or Justice of the Peace. A Notary Public should only endorse a person who is applying to be a notarial officer if the Notary Public believes the applicant is of a character that makes him or her suitable for commissioning as a notarial officer. A notarial officer is guilty of a misdemeanor if

he or she solicits, accepts, or agrees to accept a pecuniary benefit in return for his or her endorsement.

See generally RSA 640:7.

Statute and case law provide notarial officers with guidelines as to when a conflict of interest or other ethical violation might exist. However, it is incumbent upon the notarial officer, before performing a notarial act, to consider each requested act on a case-by-case basis to determine if a conflict of interest or other ethical violation might exist. Whether explicitly prohibited by statute or barred by common law, notarial officers must take special care to avoid conflicts of interest and other ethical violations during the performance of all notarial acts.

Notary Code of Professional Responsibility – Guiding Principles

To provide some guidance as to how to handle difficult situations that a notarial officer may encounter, the Notary Public Code of Responsibility - Guiding Principles, published by the National Notary Association, follows. The Guiding Principles solely address Notaries Public. However, many of the principles apply to all notarial officers.

NOTARY PUBLIC CODE OF PROFESSIONAL RESPONSIBILITY

The Guiding Principles

I

The Notary shall serve all of the public in an honest, fair, and impartial manner.

II

The Notary shall act as an impartial witness and not profit or gain, nor attempt to profit or gain, from a notarial act, apart from the fee for the notarial act and any charge associated with the fee, if applicable.

III

The Notary shall require the appearance of each principal and witness identifying a principal, if any, in order to screen each for identity, willingness, and mental competence.

IV

The Notary shall not execute a false or incomplete notarial certificate, nor perform a notarial act with respect to any document or transaction that the Notary believes is false, deceptive, or fraudulent.

V

The Notary shall act with reasonable care and not provide unauthorized advice or services.

VI

The Notary shall affix or attach an official seal to every notarial certificate and not allow the seal to be used by another.

VII

The Notary shall record every notarial act in a bound paper or secure electronic journal and safeguard it as an important public record.

VIII

The Notary shall protect the privacy of each principal and not examine, copy, divulge, or use personal or proprietary information disclosed during the execution of a notarial act unless required by law.

IX

The Notary shall obey all laws and official guidelines that pertain to notarial acts and follow recognized practice standards when they are silent.

X

The Notary shall seek instruction on notarization, and keep current on the laws, official guidelines, and practice standards of the notarial office

UNLAWFUL ACTS

State law specifically prohibits certain acts by notarial officers (many discussed above), including:

- Making a notarial act that is false;
- Making a notarial act for a person without first requiring the person to establish his or her identity as described in the Uniform Law section of this manual;
- Making a notarial act purporting to have witnessed the maker's signing of the document or purporting to have received the oath or affirmation of the person, when the notarial officer did not actually witness the maker's signing of the document or did not actually receive the oath or affirmation of the person;
- Making a notarial act knowing he or she is not authorized to do; and
- Notarizing his or her own signature.

RSA 455:16.

As a public servant, statutes prohibit a notarial officer from using his or her public office to commit “official oppression.” For notarial officers, any unauthorized act, which purports to be a notarial act, done for the purpose of benefiting the notarial officer or another, or to harm another, constitutes official oppression. Official oppression also includes knowingly refraining from performing a notarial duty imposed by law or clearly inherent in the nature of the office. Any public servant who commits official oppression is guilty of a misdemeanor.

RSA 643:1.

State law similarly forbids a notarial officer from misusing information he or she acquires by virtue of his or her office or from another public servant. Misuse of information, a misdemeanor offense, includes:

- Acquiring or divesting himself or herself of a pecuniary interest in any property, transaction or enterprise which may be affected by such action or information; or
- Speculating or making a wager on the basis of such action or information; or
- Knowingly aiding another to do any of the foregoing.

RSA 643:2.

Finally, (except for the subsequent addition of the expiration date of the notarial officer’s commission as authorized by RSA 456-B:7, I) subsequent alterations to items on the certificate

should not be made. Alteration of other items on the certificate could, in certain circumstances, constitute a crime pursuant to RSA 641:7, entitled “Tampering With Public Records or Information.”

Penalties for Unlawful Acts

New Hampshire law sets forth specific penalties for the commission of unlawful acts by applicants or by those who are already appointed notarial officers.

A notarial officer who negligently or recklessly commits any of the first three unlawful acts listed above is subject to a civil penalty of up to one thousand dollars *per violation*. Notarial officers must pay these penalties to the Secretary of State for deposit into the general fund.

A notarial officer who purposefully or knowingly commits *any* of the above listed acts is guilty of a class A misdemeanor.

A notarial officer who makes a notarial act knowing he or she is not authorized to do so is also guilty of a class A misdemeanor.

New Hampshire law authorizes the attorney general to notify a suspected violator of the state's intention to seek a civil penalty and may negotiate a settlement with the suspected violators without court action. The Secretary of State then will deposit any civil penalty paid as settlement into the general fund.

RSA 455:16.

A person who wishes to file a complaint against a notarial officer should contact the Attorney General's office, in writing at 33 Capitol Street, Concord, NH, 03301 or by telephone at 1-866-868-3703.

APPENDIX A – DEFINITIONS

All of the definitions in this section are drawn from Black’s Law Dictionary (11th Ed. 2019) unless otherwise noted.

Acknowledgement – A declaration by a person that the person has executed an instrument for the purposes stated therein and, if the instrument is executed in a representative capacity, that the person signed the instrument with proper authority and executed it as the act of the person or entity represented and identified therein. RSA 456-B:1, II.

Affirmation – A solemn pledge equivalent to an oath but without reference to a supreme being or to swearing; a solemn declaration made under penalty of perjury, but without an oath.

Apostille – An apostille record means a vital record document which contains the certification as provided for in the 1961 Hague Convention and which is recognized in the United States and other certifying countries as a certified document. An Apostille conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office. RSA 5-C:99, 456-B:6, II.

Appear or appears in person – any requirement for a personal appearance before a notary public is satisfied when the signer and the notary public are physically present in the same location or are simultaneously able to see and hear each other by two-way live real-time communication technology. RSA 456-B:2-a; RSA 456-B:6-a, II.

Attorney in fact - An agent with authority to do some particular act, not of a legal character, for another. The agent is granted such authority by a written document called “power of attorney.” Gilbert Law Dictionary, p. 22 (1997). “A party may be represented by a person who is not a licensed attorney if that person is “of good character,” does not engage in such representation as a common practice, and has filed with the clerk a power of attorney signed by the party, witnessed and acknowledged, which specifically refers to the pending case and appoints that person the party’s attorney-in-fact for the purposes of the case.” Wiebusch on New Hampshire Civil Practice and Procedure: 4 Civil Practice and Procedure § 11.03 (2019)

Commission - A warrant or authority, from the government or a court, that empowers the person named to execute official acts.

Communication technology – an electronic device or process that: a) allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and b) when necessary and consistent with other applicable law, facilitate communication with a remotely located individual who has a vision, hearing, or speech impairment. RSA 456-B:6-a, I (a).

Competency - The mental ability to understand problems and made decisions.

Credibility – The quality that makes something (as a witness or some evidence) worthy of belief.

Deponent – Someone who testifies by deposition.

Deposition – A witness’s out-of-court testimony that is reduced to writing for later use in court or for discovery purposes.

Digital certificate – a computer-based record or electronic file issued to a notary public, for the purpose of creating an official electronic seal/stamp, that complies with the X.509 standard of the International Telecommunication Union or a similar industry-standard technology. RSA 456-B:8-b, IV.

Dishonor – To refuse to accept or pay (a negotiable instrument) when presented.

Drawee – The person or entity that a draft is directed to and that is requested to pay the amount stated on it.

Electronic – relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities. RSA 456-B:1, VI.

Electronic notarization or electronic notarial act – process by which an electronic document is notarized using electronic signatures of both the signer and the notarial officer and includes an attachment of an electronic notarial certificate (and, in the case of a notarial officer, the use of an X.509, or similar industry-standard, digital certificate in attaching the official electronic seal/stamp). RSA 456-B generally. A paper document signed with ink can be converted to electronic form, and then electronically notarized by the notarial officer.

Electronic signature – electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record. RSA 456-B:1, VII.

Foreign notarial act - A notarial act performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multi-national or international organization by a Notary Public or Notary; judge, clerk, or deputy clerk of a court of record; or any other person authorized by the law of that jurisdiction to perform notarial acts. RSA 456-B:6, I.

Identity proofing – a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources. RSA 456-B:6-a, I (c).

Negotiable Instrument – A written instrument that (1) is signed by the maker or drawer, (2) includes an unconditional promise or order to pay a specified sum of money, (3) is payable on demand or at a definite time, and (4) is payable to order or to bearer.

Notarial act - Any act that a Notarial Officer is authorized to perform, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or

affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument. RSA 456-B:1, I.

Notarial officer - A Notary Public, Justice of the Peace, or other officer authorized to perform notarial acts. RSA 456-B:1, V.

Notice of protest – A statement, given usu. by a Notary Public to a drawer or indorser of a negotiable instrument, that the instrument was neither paid nor accepted.

Oath – A solemn declaration, accompanied by a swearing to God or a revered person or thing, that one’s statement is true or that one will be bound to a promise.

Official stamp – an official seal of office consisting of a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record. RSA 456-B:1, IX.

Payor bank – A bank that is asked to pay the amount of a negotiable instrument and, on the bank’s acceptance, is obliged to pay that amount.

Personal knowledge – Knowledge gained through firsthand observation or experience, as distinguished from a belief based on what someone else has said.

Power of attorney – An instrument granting someone authority to act as agent or attorney-in-fact for the grantor.

Presenting bank – A nonpayor bank that presents a negotiable instrument for payment.

Prima facie – Sufficient to establish a fact or raise a presumption unless disproved or rebutted.

Purported – Reputed; rumored.

Raised (Embossed) Seal – a physical device that leaves a round indentation on the notarized document, that raises the impression above the surface. These raised impressions contain the notary’s commission information. A raised seal provides added authenticity because a photo copy of the sealed document will not have the raised impression. RSA 456-B:1, IX and Black’s 9th Ed under Notary Seal:embossed seal.

Reasonable care - As a test of liability for negligence, the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. Generally, reasonable care is the application of whatever intelligence and attention one possesses for the satisfaction of one's needs.

Record – information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. RSA 456-B:1, XI.

Recordable instruments - Documents that are required by law to be recorded at the registry of deeds.

Remotely located individual – an individual who is not in the physical presence of the notary public who is performing a notarial act. RSA 456-B:6-a, I (e).

Remote notarization – a notarial act performed by a notary public using communications technology and involving a signer who is a remotely located individual. RSA 456-B generally.

Representative Capacity - Acting (a) For and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative; (b) As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument; (c) As an attorney in fact for a principal; or (d) In any other capacity as an authorized representative of another. RSA 456-B:1, IV.

Satisfactory evidence of identity – For a traditional paper notarization, when a person is personally known to the notarial officer, is identified upon the oath or affirmation of a credible witness personally known to the notarial officer, or is identified on the basis of identification documents. RSA 456-B:2, VI. For a remote notarization, when a person is personally known to the notary public, is identified upon the oath or affirmation of a credible witness personally known to the notary public, or is identified on the basis of two identity proofing processes. RSA 456-B:6-a, III (a).

Sign – with present intent to authenticate or adopt a record: a) to execute or adopt a tangible symbol; or b) to attach to or logically associate with the record an electronic symbol, sound, or process. RSA 456-B:1, XII.

Signature – a tangible symbol or an electronic signature that evidences the signing of a record. RSA 456-B:1, XIII.

Tangible copy – a paper printout of an electronic record. RSA 456-B generally.

Verification upon oath or affirmation - A declaration that a statement is true made by a person upon oath or affirmation. RSA 456-B:1, III.

Vital record - a certificate or report of a vital event. RSA 5-C:1, XXXVII.

Vital events - Birth, adoption, death, fetal death, marriage, divorce, legal separation, and civil annulment. RSA 5-C:1, XXXVI.

APPENDIX B – PERTINENT NEW HAMPSHIRE STATUTES

CHAPTER 455 NOTARIES PUBLIC AND COMMISSIONERS

Notaries Public

RSA 455:1 Appointment. – Notaries public shall be appointed by the governor, with advice and consent of the executive council, and shall be commissioned for 5 years.

RSA 455:2 Application. – Any person applying to be a Notary Public shall be a resident of this state or be a resident of an abutting state who is regularly employed or carries on a trade, business, or practice in this state at the time of applying. The applicant shall sign a written statement under oath as to whether the applicant has ever been convicted of a crime that has not been annulled by a court, other than minor traffic violations. The applicant shall be endorsed for appointment by 2 Notaries Public and a registered voter of this state. A resident of an abutting state may be commissioned as a Notary Public in New Hampshire provided that the individual submits to the secretary of state: the notary application fee required under RSA 5:10 and an affidavit stating that the individual (i) is a resident of an abutting state, (ii) is a registered notary in such state, and (iii) is regularly employed or carries on a trade, business, or practice in New Hampshire.

RSA 455:2-a Competency. – It shall be lawful for any Notary Public or any other officer authorized to administer an oath or take an acknowledgment or proof of an instrument or make protest, who is a stockholder, director, officer or employee of a bank or other corporation, to take the acknowledgment of any party to any written instrument executed to or by such corporation, or to administer an oath to any other stockholder, director, officer, employee or agent of such corporation, or to protest for nonacceptance or nonpayment bills of exchange, drafts, checks, notes and other negotiable instruments which may be owned or held for collection by such corporation; provided it shall be unlawful for any Notary Public or other officer authorized to administer an oath or take an acknowledgment or proof of an instrument or make protest, to take the acknowledgment of an instrument executed by or to a bank or other corporation of which he is a stockholder, director, officer or employee, where such notary or other officer is a party to such instrument, either individually or as a representative of such corporation, or to protest any negotiable instrument owned or held for collection by such corporation, where such notary or other officer is individually a party to such instrument. No person acting in the capacity of Notary Public shall notarize his or her own signature. This section shall not be construed to imply that the acts herein made lawful may heretofore have been unlawful, and no instrument heretofore acknowledged or notarized before a Notary Public or other officer who would have been competent to act under the terms hereof shall hereafter be impugned or invalidated on the grounds that such Notary Public or other officer was incompetent to act.

RSA 455:3 Powers. I.– Every Notary Public, in addition to the usual powers of the office, shall have the same powers as a Justice of the Peace in relation to depositions and the acknowledgment of deeds and other instruments and the administering of oaths.

II. All notarial acts performed by a Notary Public with respect to a record shall be either under an embossed official seal or shall carry the legible imprint of an electronic or rubber official stamp stating the name of the notary, the words "Notary Public, New Hampshire" and the expiration date of the Notary Public's commission.

III. As used in this section:

- (a) "Electronic" has the same meaning given in RSA 456-B:1, VI;
- (b) "Notarial Act" has the same meaning given in RSA 456-B:1, I;
- (c) "Official Stamp" has the same meaning given in RSA 456-B:1, IX; and
- (d) "Record" has the same meaning given in RSA 456-B:1, XI.

RSA 455:4 Protest as Evidence. – The protest of a bill of exchange, note, or order, duly certified by a Notary Public, shall be evidence of the facts stated in the protest and of the notice given to the drawer or endorsers.

Notarial Fees

RSA 455:11 Notarial Fees. – Notaries public shall be entitled to a fee of up to \$10 for each oath, witness, service, or certification with the following exceptions:

I. For services related to the taking of depositions, the Notary Public shall be entitled to the same fees as Justices are entitled to receive pursuant to RSA 517:19.

II. No fees shall be allowed for administering and certifying oaths of office of town officers.

III. For performing notarial acts for a remotely located individual under RSA 456-B:6-a, a notary public shall be entitled to a fee of \$25 per act.

Commissioners

RSA 455:12 Appointment. – The governor, with advice and consent of the executive council, may appoint, in each state, district, and territory of the United States, and in each foreign country to which the United States sends a representative, a commissioner or commissioners of deeds, to continue in office 5 years.

RSA 455:13 Oath. – Before any commissioner of deeds shall perform any duty of his or her office, he or she shall take and subscribe an oath, before a judge of some court of record, that he or she will well and faithfully perform all the duties of the office, which oath shall be filed by him or her in the office of the secretary of state within 3 months after taking the same.

RSA 455:14 Powers. – Such commissioner of deeds may, both within and without this state, administer oaths, take depositions and affidavits to be used in this state and notify parties of the time and place thereof, and take the acknowledgment of deeds or instruments to be used or recorded in this state, in the same manner and with the same effect as a Justice of the Peace of this state may do within the state.

RSA 455:15 For Other States; By Court Appointment. – Any commissioner for any other state who is authorized to take depositions, administer oaths and affirmations and take the acknowledgment of deeds within this state, to be used in such other state, and any commissioner appointed by the supreme or superior court or any justice thereof, shall have the power to administer oaths and affirmations, to issue writs of summons to a witness, to proceed against such witness upon his neglect to appear and give his deposition, and in all proceedings under his commission, that is vested in Justices of the Peace in like cases.

Enforcement

RSA 455:16 Misconduct, Penalties. –

I. A person shall be subject to a civil penalty not to exceed \$1,000 if such person:

(a) When applying for a commission as a Notary Public, negligently or recklessly makes a material false representation on the application form;

(b) Holding a commission as a Notary Public or Justice of the Peace, negligently or recklessly makes a notarial act that is false;

(c) Holding a commission as a Notary Public or Justice of the Peace, negligently or recklessly makes a notarial act for a person not personally known by the notary without first requiring the person to establish his or her identity; or

(d) Holding a commission as a Notary Public or Justice of the Peace, negligently or recklessly makes a notarial act purporting to have witnessed the maker's signing of the document or purporting to have received the oath or affirmation of the person, when the notary did not actually witness the maker's signing of the document or did not actually receive the oath or affirmation of the person.

II. A person shall be guilty of a class A misdemeanor:

(a) If such person purposefully or knowingly commits any of the acts listed in paragraph I.

(b) If such person makes a notarial act, as defined by RSA 456-B:1, I, knowing he or she is not a person authorized by RSA 456-B:3 to perform a notarial act.

III. (a) The court, upon petition of the attorney general, may levy upon any person who violates the provisions of paragraph I a civil penalty in an amount not to exceed \$1,000 per violation. All penalties assessed under this paragraph shall be paid to the secretary of state for deposit into the general fund.

(b) The attorney general shall have authority to notify suspected violators of this section of the state's intention to seek a civil penalty, to negotiate, and to settle with such suspected violators without court action, provided any civil penalty paid as settlement shall be paid to the secretary of state for deposit into the general fund.

RSA 455:17 Notary Public, Justice of the Peace Manual, Education, Enforcement. –

I. The secretary of state, with the advice and approval of the attorney general, shall prepare or cause to be prepared an up-to-date manual on the privileges, duties, and responsibilities of notaries public and Justices of the Peace in New Hampshire. The manual shall be written in non-technical language. The manual shall be distributed to each person commissioned a Notary Public, commissioner of deeds pursuant to RSA 455:12, and Justice of the Peace. The manual shall be available to the public free of charge. The manual shall be updated within 6 months following the end of any session of the legislature that amends the statutes affecting the

privileges, duties, or responsibilities of notaries public, commissioners, or Justices of the Peace. The first edition of the manual shall be prepared by September 1, 2007.

II. The secretary of state may use the funds from the portion of the fees paid by applicants for commissions as a Notary Public or a Justice of the Peace deposited into the fund established in RSA 5:10-b for the preparation, printing, and distribution of a Notary Public/Justice of the Peace manual, other education of notaries public/Justices of the Peace, or both, and the acquisition, development, and maintenance of electronic records systems that will enhance the efficiency of the management of public records maintained by his or her office and to enhance the ease of submitting applications and renewals. The secretary of state shall enter into an agreement with the attorney general to provide funds from the fund established in RSA 5:10-b for the use of the attorney general for legal services related to the Notary Public/Justice of the Peace manual and for the enforcement of laws relating to Notary Public or Justice of the Peace misconduct.

CHAPTER 455-A JUSTICES OF THE PEACE

RSA 455-A:1 Appointment. – Justices of the Peace shall be appointed by the governor, with the advice and consent of the executive council, and shall be commissioned for 5 years, as provided in the New Hampshire Constitution.

RSA 455-A:2 Application. –

I. Any person applying to be a Justice of the Peace shall indicate on the application whether he or she has been a registered voter in this state for at least 3 years immediately preceding the date of application. The applicant must sign a written statement under oath stating whether the applicant has ever been convicted of a crime that has not been annulled by a court, other than minor traffic violations. The applicant shall be endorsed for appointment by 2 Justices of the Peace and a registered voter of this state.

II. A person shall be subject to a civil penalty not to exceed \$1,000 if he or she negligently or recklessly makes a material false representation on the application form when applying for a commission as a Justice of the Peace. A person is guilty of a class A misdemeanor if he or she purposefully or knowingly makes a material false representation on the application form when applying for a commission as a Justice of the Peace. The civil penalty shall be imposed in the same manner as set forth in RSA 455:16.

RSA 455-A:3 Powers. – Every Justice of the Peace shall have the power to administer oaths, perform marriage ceremonies, acknowledge instruments, and any other power prescribed by law. A Justice of the Peace signing an acknowledgment or jurat on any document or instrument shall type, print, or stamp the name of the Justice of the Peace and state the expiration date of his or her commission on the document or instrument. However, failure to meet these requirements shall not impair the legal validity of any acknowledgment or jurat.

CHAPTER 456-B
UNIFORM LAW ON NOTARIAL ACTS

As amended by Chapter 206; Laws of 2021

For text of Uniform Act, and variation notes and annotation materials for adopting jurisdictions, see Uniform Laws Annotated, Master Edition, Volume 14.

456-B:1 Definitions. –

I. "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer is authorized to perform under the laws of this state, and includes taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

II. "Acknowledgment" means a declaration by an individual before a notarial officer that the individual has signed a record for the purposes stated therein and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified therein.

III. "Verification upon oath or affirmation" means a declaration that a statement is true made by an individual upon oath or affirmation.

IV. "In a representative capacity" means acting as:

(a) An authorized officer, agent, partner, trustee, or other representative for a person other than an individual;

(b) A public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

(c) An agent or attorney in fact for a principal; or

(d) In any other capacity as an authorized representative of another.

V. "Notarial officer" means a notary public, justice of the peace, or other officer authorized to perform notarial acts.

VI. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

VII. "Electronic signature" means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

VIII. "Notary public" means an individual appointed to perform a notarial act by the governor and executive council.

IX. "Official stamp" means an official seal of office consisting of a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

X. "Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

XI. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

XII. "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

XIII. "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.

XIV. "Stamping device" means:

(a) A physical device capable of affixing to or embossing on a tangible record an official stamp; or

(b) An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

XV. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

456-B:2 Notarial Acts. –

I. In taking an acknowledgment, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the instrument is the signature of the individual.

II. In taking a verification upon oath or affirmation, the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

III. In witnessing or attesting a signature the notarial officer must determine, either from personal knowledge or from satisfactory evidence, that the individual appearing before the officer and signing the record has the identity claimed.

IV. In certifying or attesting a copy of a record or other item that was copied, the notarial officer must determine that the proffered copy is a full, true, and accurate transcription or reproduction of the record or item.

V. In making or noting a protest of a negotiable instrument the notarial officer must determine the matters set forth in RSA 382-A:3-505.

VI. A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

VII. (a) For the purposes of this section, but only in the context of executing an estate planning instrument such as a will or estate planning trust, the requirement that a person appear before a notarial officer at the time of the notarial act is satisfied if the notarial officer is:

(1) The attorney, licensed to practice law in New Hampshire and in good standing, who drafted the estate planning instrument;

(2) Another attorney licensed to practice law in New Hampshire and in good standing, under the drafting attorney's supervision; or

(3) A paralegal under the supervision of either such attorney; and

(b) The person and the notarial officer can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarial act.

(c) This paragraph shall apply only to notarial acts performed on or after March 23, 2020. In addition, a notarial act performed in compliance with emergency order #11 pursuant to executive order 2020-04 from its effective date through the date of its expiration is valid.

456-B:2-a Personal Appearance Required. If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

456-B:2-b Identification of Individual. I. A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

II. A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(a) By means of:

(1) A passport, driver's license, or government issued nondriver identification card, which is current and unexpired; or

(2) Another form of government identification issued to an individual, which is current and unexpired, contains the signature or a photograph of the individual, and is satisfactory to the officer; or

(b) By a verification upon oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license, or government issued nondriver identification card, which is current and unexpired.

III. A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

456-B:3 Notarial Acts in This State. –

I. A notarial act may be performed within this state by the following persons:

(a) A notary public of this state;

(b) A judge, marital master, clerk, deputy clerk, register of probate, or deputy register of probate of any court of this state; or

(c) A justice of the peace of this state.

II. Notarial acts performed within this state under federal authority as provided in RSA 456-B:5 have the same effect as if performed by a notarial officer of this state.

III. The signature, embossed official seal or the legible imprint of an electronic or rubber official stamp stating the name of the notary, and the words "notary public, New Hampshire" and the expiration date of the notary public's commission of a person performing a notarial act or for a justice of the peace the name of the justice and the expiration date of his or her commission typed, printed, or stamped on the document are prima facie evidence that the signature is genuine and that the person holds the designated title.

IV. Any person admitted to the practice of law in this state may administer an oath or affirmation for the purpose of taking oral testimony.

456-B:4 Notarial Acts in Other Jurisdictions of the United States. –

I. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state, if performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

(a) A notary public of that jurisdiction;

(b) A judge, clerk, or deputy clerk of a court of that jurisdiction; or

- (c) Any other person authorized by the law of that jurisdiction to perform notarial acts.
- II. Notarial acts performed in other jurisdictions of the United States under federal authority as provided in RSA 456-B:5 have the same effect as if performed by a notarial officer of this state.
- III. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
- IV. The signature and indicated title of an officer listed in subparagraphs I(a) or (b) conclusively establishes the authority of a holder of that title to perform a notarial act.

456-B:5 Notarial Acts Under Federal Authority. –

- I. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed anywhere by any of the following persons under authority granted by the law of the United States:
 - (a) A judge, clerk, or deputy clerk of a court;
 - (b) A commissioned officer on active duty in the military service of the United States;
 - (c) An officer of the foreign service or consular officer of the United States; or
 - (d) Any other person authorized by federal law to perform notarial acts.
- II. The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.
- III. The signature and indicated title of an officer listed in subparagraphs I(a), (b), or (c) conclusively establishes the authority of a holder of that title to perform a notarial act.

456-B:6 Foreign Notarial Acts. –

- I. A notarial act has the same effect under the law of this state as if performed by a notarial officer of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multi-national or international organization by any of the following persons:
 - (a) A notary public or notary;
 - (b) A judge, clerk, or deputy clerk of a court of record; or
 - (c) Any other person authorized by the law of that jurisdiction to perform notarial acts.
- II. An "Apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.
- III. A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, conclusively establishes any matter relating to the authenticity or validity of the notarial act set forth in the certificate.
- IV. An official stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds the indicated title.
- V. An official stamp or seal of an officer listed in subparagraph I(a) or (b) is prima facie evidence that a person with the indicated title has authority to perform notarial acts.
- VI. If the title of office and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

456-B:6-a Notarial Act Performed for Remotely Located Individual.

- I. In this section:

(a) “Communication Technology” means an electronic device or process that:

(1) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(2) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing or speech impairment.

(b) “Foreign state” means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(c) “Identity proofing” means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(d) “Outside the United States” means a location outside the geographic boundaries of the United State, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

(e) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a notarial act under paragraph III.

II. A remotely located individual may comply with RSA 456-B:2-a, and any other requirement under the law of this state to appear before or be in the presence of a notary public at the time of a notarial act, by using communication technology to appear before a notary public.

III. A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

(a) The notary public:

(1) Has personal knowledge under RSA 456-B:2-a, I, of the identity of the individual;

(2) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under RSA 456-B:2-b, II, or this section; or

(3) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least 2 different types of identity proofing;

(b) The notary public is able reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

(c) The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act; and

(d) For a remotely located individual located outside the United States:

(1) The record:

(A) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

(B) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

(2) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

IV. If a notarial act is performed under this section, the certificate of notarial act required by RSA 456-B:7 and the short-form certificate provided in RSA 456-B:8 must indicate that the notarial act was performed using communication technology.

V. A short-form certificate provided in RSA 456-B:8 for a notarial act subject to this section is sufficient if it:

(a) Complies with rules adopted under subparagraph VIII(a); or

(b) Is in the form provided in RSA 456-B:8 and contains a statement substantially as follows: “This notarial act involved the use of communication technology.”

VI. A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audio-visual recording created under subparagraph III(c) or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subparagraph VIII(d), the recording must be retained for a period of at least 10 years after the recording is made.

VII. Before a notary public performs the notary public’s initial notarial act under this section, the notary public must notify the secretary of state that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the secretary of state has established standards under paragraph VIII and RSA 456-B:8-b, IV, for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

VIII. In addition to adopting rules under RSA 456-B:8-b, IV, the secretary of state may adopt rules under RSA 541-A regarding performance of a notarial act under this section. The rules may:

(a) Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(b) Establish standards for communication technology and identity proofing;

(c) Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(d) Establish standards and a period for the retention of an audio-visual recording created under subparagraph III(c).

IX. Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the secretary of state must consider:

(a) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State.

(b) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

(c) The views of governmental officials and entities and other interested parties.

X. Unless the secretary of state has adopted a rule establishing standards for identity proofing under subparagraph VIII(b), a notary public shall comply with the credential analysis and authentication provisions of the Standards for Remote Online Notarization (Version 1) adopted by The Mortgage Industry Standards Maintenance Organization on August 28, 2019.

Compliance with this paragraph satisfies the requirement of using at least 2 different types of identity proofing when performing a notarial act for a remotely located individual under this section.

456-B:7 Certificate of Notarial Acts. –

I. A notarial act must be evidenced by a certificate signed and dated by a notarial officer. The certificate must include identification of the jurisdiction in which the notarial act is performed

and the title of the office of the notarial officer and may include the official stamp or seal of office. If the officer is a notary public, the certificate must also indicate the date of expiration, if any, of the commission of office, but omission of that information may subsequently be corrected. If the officer is a commissioned officer on active duty in the military service of the United States, it must also include the officer's rank.

II. A certificate of a notarial act is sufficient if it meets the requirements of paragraph I and it:

- (a) Is in the short form set forth in RSA 456-B:8;
- (b) Is in a form otherwise prescribed by the law of this state;
- (c) Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or
- (d) Sets forth the actions of the notarial officer and those are sufficient to meet the requirements of the designated notarial act.

III. By executing a certificate of a notarial act, the notarial officer certifies that the officer has made the determinations required by RSA 456-B:2.

456-B:8 Short Forms. –

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by RSA 456-B:7, I:

I. For an acknowledgment in an individual capacity:

State of _____

(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s))

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My commission expires: _____]

II. For an acknowledgment in a representative capacity:

State of _____

(County) of _____

This instrument was acknowledged before me on (date) by (name(s) of person(s)) as (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My commission expires: _____]

III. For a verification upon oath or affirmation:

State of _____

(County) of _____

Signed and sworn to (or affirmed) before me on (date) by (name(s) of person(s) making statement).

(Signature of notarial officer)
(Seal, if any)

Title (and Rank)

[My commission expires: _____]

IV. For witnessing or attesting a signature:

State of _____

(County) of _____

Signed or attested before me on (date) by (name(s) of person(s)).

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My commission expires: _____]

V. For attestation of a copy of a document:

State of _____

(County) of _____

I certify that this is a true and correct copy of a document in the possession of

Dated _____

(Signature of notarial officer)

(Seal, if any)

Title (and Rank)

[My commission expires: _____]

VI. For certifying a tangible copy of an electronic record:

State of _____

(County) of _____

I certify that this record is a true and correct copy of an electronic record printed by me or under my supervision.

Dated _____

Signature of Notarial Officer _____ (Seal, if any)

Title (and Rank) _____

[My commission expires: _____]

456-B:8-a Official Stamp; Stamping Device.

I. The electronic or rubber official stamp of a notary public shall:

(a) Include the information required by RSA 455:3; and

(b) Be capable of being copied together with the record to which it is affected or attached or with which it is logically associated.

II. A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or

the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, if any, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.

III. If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the secretary of state on discovering that the device is lost or stolen.

456-B:8-b Notification Regarding Performance of Notarial Act on Electronic Record; Selection of Technology; Rules.

I. A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

II. Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the secretary of state that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the secretary of state has established standards for approval of technology, the technology shall conform to the standards. If the technology conforms to the standards, the secretary of state shall approve the use of the technology.

III. The secretary of state may adopt rules under RSA 541-A to implement this chapter. Rules adopted regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification.

IV. Unless the secretary of state has adopted a rule establishing standards for tamper-evident technology, a notary public shall attach or logically associate the notary public's official stamp to an electronic record by use of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology.

456-B:8-c Journal.

I. A notary public shall maintain a journal in which the notary public chronicles all notarial acts the notary public performs with respect to a remotely located individual under RSA 456-B:6-a. The notary public shall retain the journal for 10 years after the performance of the last notarial act chronicled in the journal.

II. A journal may be created on a tangible medium or in an electronic format. A notary public shall maintain only one journal at a time to chronicle all notarial acts performed regarding tangible records and one or more journals to chronicle all notarial acts performed regarding electronic records. If a journal is maintained on a tangible medium, it shall be a permanent, bound register, with numbered pages. If the journal is maintained in an electronic format, it shall be in a permanent tamper-evident electronic format complying with the rules of the secretary of state.

III. An entry in a journal shall be made contemporaneously with performance of the notarial act and contain the following information:

- (a) The date and time of the notarial act.

- (b) A description of the record, if any, and type of notarial act.
- (c) The full name and address of each individual for whom the notarial act is performed.
- (d) If identity of the individual is based on personal knowledge, a statement to that effect.
- (e) If identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration of the identification credential; and
- (f) The fee, if any, charged by the notary public.

IV. If the journal of a notary public is lost, the notary public loses access to the journal, or the journal is stolen, the notary public promptly shall notify the secretary of state upon discovering the journal is lost, access is lost, or the journal is stolen.

V. On resignation from, or the revocation or suspension of, the commission of a notary public, the notary public shall retain the journal in accordance with paragraph I and inform the secretary of state where the journal is located.

VI. Instead of retaining a journal as provided in paragraphs I and V, a current or former notary public may transmit the journal to a repository approved by the secretary of state.

VII. Upon the death or adjudication of incompetency of a current or former notary public, the personal representative or guardian of the notary public shall retain the journal as provided in paragraphs I or V or transmit the journal to a repository approved by the secretary of state.

456-B:8-d Validity of Notarial Acts. The failure of a notarial officer to perform a duty or meet a requirement specified in this chapter or RSA 455 does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this chapter or RSA 455 does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than this chapter or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

456-B:8-e Relation to Electronic Signatures in Global and National Commerce Act. This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. section 7001 et. seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. section 7003(b).

456-B:9 Notarial Acts Affected by This Act. – This chapter applies to notarial acts performed on or after its effective date.

456-B:10 Uniformity of Application and Construction. – This chapter shall be so interpreted to make uniform the law among those states enacting it.

456-B:11 Short Title. – This chapter may be cited as the Uniform Law on Notarial Acts.

RSA 551:2, III(b) Nothing in this paragraph shall be deemed to allow an electronic will or codicil. This paragraph shall apply only to wills executed on or after March 23, 2020.



MISMO Remote Online Notarization Standards

FINAL Candidate Recommendation (CR) Version

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Standards for Remote Online Notarization

Summary

This document outlines technical and procedural guidance and establishes underlying principles that should be considered as organizations move towards implementation of Remote Online Notarization.

The intended audience includes but is not limited to: state regulators, commissioning or licensing officials; financial institutions; service providers; technology providers; title insurance underwriters; trade associations; mortgage and title/settlement service providers.

It is worth noting that these are the minimum set of technical and procedural standards and parties are free to implement additional requirements, practices or processes for the items addressed by these standards¹. While not specifically addressed in these standards, remote online notarization system implementations should accommodate ADA (Americans with Disabilities Act) computer user interface standards and/or best practices as required by state and/or federal law².

Capitalized terms not defined in the text are defined in Section 7, entitled “DEFINITIONS”.

1. CREDENTIAL ANALYSIS AND AUTHENTICATION

The following authentication and analysis protocols are intended to support the notary public (Notary) in making the determination that satisfactory evidence of each Principal’s identity has been established for a Remote Online Notarization. This section specifies standards for States to reference when identity proofing involving Knowledge-Based Authentication (KBA) and/or credential analysis is required to perform Remote Online Notarization³. If a State specifies additional or alternative means for identify verification aside from identify proofing or credential analysis (such as by oath or affirmation of a credible witness, by a Notary’s personal knowledge of the Principal, or by other methods), such additional or alternative means are not addressed by these standards.

- a. Principal identity verification for Remote Online Notarization services must include consistent Multi-Factor Authentication procedures:
 - i. Each Principal’s identity credential must be verified against trusted third-party data sources;

¹ Mortgage lenders, insurance underwriters or other parties may impose more restrictive or additional standards based on jurisdiction, transaction type, financial implications or other factors.

² ADA requirements are a separate and distinct body of work and are not addressed by these standards.

³ As of the time of this writing, KBA, and credential analysis procedures and technology are widely accepted as identity proofing processes and are therefore specifically addressed, however, MISMO supports efforts to explore and permit other types of analysis and authentication.

- ii. Each Principal’s identity must be bound to each individual Principal following successful Knowledge-Based Authentication, or another form of authentication or trusted third-party identity verification such as online banking authentication; and
- iii. Procedures must provide for human visual comparison between the Principal’s identity credential presented to the Notary and the Principal himself or herself.

b. Credential Analysis of Government Issued Identification

Remote Online Notarization service providers must use automated software processes to aid the Notary with their role in verifying each Principal’s identity.

- i. The credential must pass an authenticity test, consistent with sound commercial practices that:
 - 1. Use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;
 - 2. Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;
 - 3. Use information held or published by the issuing source or authoritative source(s), as available, to confirm the validity of credential details; and
 - 4. Provide the output of the authenticity test to the Notary.⁴
- ii. The credential analysis procedure must enable the Notary to visually compare both of the following for consistency:
 - 1. The information and photo on the presented credential image; and
 - 2. The Principal as viewed by the Notary in real time through the audio/video system.
- iii. Credential Type Requirements
 - 1. Must be a government-issued document meeting the requirements of the State that contains a photograph of the individual, may be imaged, photographed and video recorded under applicable state and federal law⁵, and can be subjected to credential analysis.
- iv. Credential Image Capture
 - 1. The credential image capture procedure must confirm that:
 - a. The Principal is in possession of the credential at the time of the Notarial Act;
 - b. Credential images submitted for credential analysis have not been manipulated; and
 - c. Credential images match the credential in the Principal’s possession.

⁴ The output may simply indicate a “pass” or “fail” type score, or may provide more information to indicate the outcome of the authenticity test to the Notary.

⁵ State or federal law may prohibit the capture of certain credential images.

2. The following general principles should be considered in the context of image resolution:

- a. Captured image resolution should be sufficient enough for the service provider to perform credential analysis per the requirements above.
- b. Image resolution should be sufficient to enable visual inspection by the Notary, including legible text and clarity of photographs, barcodes, and other credential features.
- c. All images necessary to perform visual inspection and credential analysis must be captured — e.g. U.S. Passport requires identity page; state driver’s licenses require front and back.

c. **Dynamic Knowledge-Based Authentication**

Dynamic Knowledge-Based Authentication (KBA) is an identity assessment that is based on a set of questions formulated from public or private data sources. A Dynamic Knowledge-Based Authentication procedure must meet the following requirements:

- i. Each Principal must answer questions and achieve a passing score.
 - 1. MISMO Recommends:
 - a. Five questions, drawn from public or private data sources.
 - b. A minimum of five possible answer choices per question.
 - c. At least four of the five questions answered correctly (a passing score of 80%).
 - d. All five questions answered within two minutes.
- ii. Each Principal to be provided a reasonable number of attempts per Signing Session.
 - 1. MISMO Recommends:
 - a. If a Principal fails their first quiz, they may attempt up to two additional quizzes within 48 hours from the first failure⁶.
 - b. During any quiz retake, a minimum of 40% (two) of the prior questions must be replaced⁷.
- iii. The Remote Online Notarization system provider must not include the KBA procedure as part of the video recording or as part of the system provided person-to-person video interaction between the Notary and the Signatory, and must not store the data or information presented in the KBA

⁶ The standard of three total attempts within 48 hours accommodates a security provision (a maximum number of attempts per Signing Session) and a business provision (a reasonable time frame for such attempts) for a wide range of notarial scenarios. These standards also accommodate known technical limitations imposed by KBA service providers.

⁷ The purpose of replacing questions in subsequent KBA quizzes is to reduce the statistical probability of an individual guessing correct answers.

questions and answers. However, the output of the KBA assessment procedure must be provided to the Notary.⁸

d. **Biometrics and Other Requirements**

Biometric sensing technologies have potential application to Remote Online Notarization in the areas of authentication, credential analysis, and identity verification. These technologies include but are not limited to: facial, voice, and fingerprint recognition.⁹

e. **Workflow Continuity Requirement**

If a Principal must exit the workflow, they must meet the criteria outlined in this section and restart the Credential Analysis and Authentication workflow from the beginning.¹⁰

2. AUDIO/VIDEO QUALITY

- a. A reliable Remote Online Notarization operating model should consist of continuous, synchronous audio and video feeds with good clarity such that all participants can be clearly seen and understood at all times.
- b. Inherent in online audio/video technology is the presence of temporary surges or spikes in quantitative measures like bitrate and/or frequency of communications and no simple technical limits are practical or prudent. Rather, a sounder approach to ensuring reliable real-time communications is to rely on the judgement of the Notary to determine the adequacy of the communications and provide direction to terminate the session if those conditions are not met¹¹.
- c. The audio/video recording must include the person-to-person interaction required as part of the Notarial Act as defined by the State¹², must be logically associated to the electronic Audit Trail¹³, and must be capable of being viewed and heard using broadly available audio/video players.
- d. The video recording of the transaction documents executed in the Remote Online Notarization process is not required as part of these standards.¹⁴

⁸ The output may simply indicate a “pass” or “fail” type score, and/or may provide more information to indicate the outcome of the KBA assessment to the Notary.

⁹ MISMO does not offer specific guidance in applying this type of authentication protocol due to the lack of available industry standards regarding biometric technology.

¹⁰ Principals may have to exit the workflow for various valid or invalid reasons and may do so for an unpredictable amount of time. Therefore, to simplify these standards and provide unambiguous guidance, MISMO requires a new Remote Online Notarization workflow be started each time a Principal exits the workflow.

¹¹ Uniform standards that take into account all potential audio/video disruptions and whether they affect the integrity of the Notarial Act are not practical, and therefore, these standards provide for human judgement to determine adequate audio/video quality.

¹² The specific activities required in the Notarial Act may vary by state and therefore are not defined here.

¹³ One must be able to match the application of eSignatures, and other trackable events recorded in the Audit Trail, to the people and actions in the audio/video recording.

¹⁴ Many documents that may be notarized in this manner may contain non-public personal information (NPI) as defined under applicable law. Therefore, MISMO does not require video capture of documents or credentials as part

3. STORAGE OF NOTARIAL RECORDS

- a. Where applicable, and in accordance with State laws, rules and regulations, the Notary must maintain accurate and reliable Notarial Records. These State laws, rules and regulations may or may not require that a copy of the audio/video recording be part of a notarial journal (which may be subject to public access under State law)¹⁵. Notaries must have the ability to electronically capture the required Notarial Records or to direct a third party to do so on their behalf. In either case, the Remote Online Notarization system must:
 - i. Facilitate the process of collecting the required Notarial Records;
 - ii. Provide a method by which a Notary can access and/or export the Notarial Records; and
 - iii. Provide automated backup of the Notarial Records and audio/video recording to ensure redundancy.
- b. The Remote Online Notarization technology solution must employ data protection safeguards consistent with generally accepted information security standards.
- c. Retention of the audio/video recording and Notarial Records by either the Notary public or their designated third party, as directed by the Notary, must adhere to the laws, directives, rules and regulations of the State.

4. POST-EXECUTION RECORDS

- a. Significant actions completed as part of a Remote Online Notarization Signing Session should be recorded in an Audit Trail. Each entry in this Audit Trail should clearly indicate the action performed (e.g. addition of an electronic signature), the date/time of its performance (e.g. Coordinated Universal Time, 2018-08-21 01:14:22 UTC), the name of the party performing the action (e.g. John Doe) and the IP address of the party performing the action. Further detailed guidance on the contents of the Audit Trail or its form is beyond the scope of these standards.
- b. Each document completed as part of a Remote Online Notarization should be electronically signed and rendered Tamper-Evident.

5. SECURITY CONSIDERATIONS

Remote Online Notarization technology providers must have comprehensive security programs in place to ensure privacy and data security. Technology providers should be vigilant to ensure consumer data, privacy and information security laws and regulations are satisfied through their information security programs. There are many industry accepted models, standards and frameworks for how to develop such programs.

of these standards. Including the documents and/or credentials in the video recording may be considered as a matter of policy on a state-by-state basis.

¹⁵ Treatment of the audio/video recording in the context of the Notarial Record or journal is a matter of public policy and not addressed in these standards.

6. COUNTY RECORDING CONSIDERATIONS FOR ELECTRONICALLY NOTARIZED DOCUMENTS

- a. The Remote Online Notarization system, process, and procedures must be capable of generating a printable version of all documents executed in the system, including but not limited to the documents executed in the Notarial Act, and associated certifications as required by the State, county and/or other governing or regulatory body.¹⁶
- b. Any document notarized remotely online must clearly state, in the remote online notarial certificate, that the person making the acknowledgment, oath or affirmation and signing the document appeared remotely online using audio/video communication technology.

7. DEFINITIONS

- a. **“Audit Trail”** means a chronological and detailed list of critical events and actions, from the beginning to the end of the Remote Online Notarization process, including the dates and times the events and actions took place and identification of the individuals and/or systems that performed the events or actions. Also known as: Audit Log or Event Log.
- b. **“Knowledge-Based Authentication” or “KBA”** means an identity verification method based on knowledge of private information associated with the claimed identity of a person.¹⁷
- c. **“Multi-Factor Authentication” or “MFA”** means a method of access control in which a user is granted access after successfully presenting identity evidence through a minimum of two of the following mechanisms: something they *have* (e.g. an ID credential), something they *know* (e.g. KBA), something they *are* (e.g. iris, retinal, thumbprint scans, facial recognition and other forms of biometric identification).
- d. **“Notarial Act”** means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of a specific State. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.¹⁸
- e. **“Notarial Records”** means details of the Notarial Act common to the State’s notarial journal or register requirements.

¹⁶ While outside the scope of these standards, the concept of “papering out” and printing eNotarized documents for use in a paper county recording process may be permissible under the law of some states. These standards require electronically created documents be printable for this purpose.

¹⁷ DIGITAL IDENTITY GUIDELINES NIST SP 800-63-3 (page 46 for definition of KBV a.k.a. KBA)

¹⁸ Mortgage Bankers Association – American Land Title Association Model Legislation for Remote Online Notarization Sec.1 Definitions (9) “Notarial Act” page 3

- f. **“Principal”** means an individual whose electronic signature is notarized in a remote online notarization; or making an oath or affirmation or an acknowledgment other than in the capacity of a witness for the remote online notarization.¹⁹
- g. **“Record”** means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.²⁰
- h. **“Remote Online Notarization”** means a Notarial Act performed by means of an electronic device or process that allows a notary public and a Principal, who is not in the same physical location as the notary public, to complete a Notarial Act and communicate with each other simultaneously by sight and sound.²¹
- i. **“Signing Session”** means one or more Notarial Acts performed on a single set of documents as a single event by a single Notary with one or more Principals and any applicable witnesses.
- j. **“State”** means the state or jurisdiction under which the notary public is commissioned and for which the notary public is performing the Remote Online Notarization.²²
- k. **“Tamper-Evident”** A technology based process that indicates whether a change has been made to the record since the technology was applied.

¹⁹ Mortgage Bankers Association – American Land Title Association Model Legislation for Remote Online Notarization Sec.1 Definitions (11) “Notarial Act” page 3

²⁰ RULONA Section 2. Definition for Record (Page 5)

²¹ Adapted from the Mortgage Bankers Association – American Land Title Association Model Legislation for Remote Online Notarization Sec.1 Definitions (13) “Remote online notarization” page 4 and “(2) “Communication technology” page 1.

²² This state definition provides clarity for which jurisdiction rules, requirements or regulations must be referenced when there is more than one state related to a Notarial Act: (1) the state where the Principal is located, (2) the state where a property related to the Notarial Act is located, (3) the state in which the Notary is located, or (4) other state references.