

HOUSE BILL 470

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

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Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO NOTARIAL ACTS; REQUIRING PERSONAL APPEARANCE FOR NOTARIAL ACTS PERFORMED ELECTRONICALLY UPON RECORDABLE INSTRUMENTS OF WRITING; REMOVING THE IN-PERSON REQUIREMENT FOR CERTAIN NOTARIAL ACTS PERFORMED ELECTRONICALLY; REQUIRING SECURE STORAGE OF ELECTRONICALLY AUTHENTICATED DOCUMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 14-9A-3 NMSA 1978 (being Laws 2007, Chapter 261, Section 3) is amended to read:

"14-9A-3. VALIDITY OF ELECTRONIC DOCUMENTS.--

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A. If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by an electronic document satisfying the Uniform Real Property Electronic Recording Act.

B. If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

C. A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed or made under oath is satisfied if the electronic signature of the person authorized to perform that act and all other information required to be included is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression or seal need not accompany an electronic signature.

D. All deeds, mortgages, leases of an initial term plus option terms in excess of five years, or memoranda of the material terms of such leases, assignments or amendments to such leases, leasehold mortgages, United States patents and other writings affecting the title to real estate, that are required to be notarized, acknowledged, verified, witnessed or made under oath HSEIC→~~may be performed electronically; provided that the individual making the statement or executing the signature shall appear personally before the notarial officer~~

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shall be performed by a notarial act in which a person at a single time and place appears in person before the notary public and presents the document←HSEIC."

SECTION 2. Section 14-12A-2 NMSA 1978 (being Laws 2003, Chapter 286, Section 2) is amended to read:

"14-12A-2. DEFINITIONS.--As used in the Notary Public Act:

A. "acknowledgment" means a notarial act in which a person:

(1) at a single time and place

[←] appears in person before the notary public and presents a document or presents the document through an online, electronic certified platform pursuant to rules and standards adopted by the secretary of state;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) indicates to the notary public that the signature on the document was voluntarily affixed by the person for the purposes stated within the document and, if applicable, that the person had due authority to sign in a particular representative capacity;

B. "affirmation" means a notarial act that is legally equivalent to an oath and in which a person:

(1) at a single time and place

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[~~1~~] appears in person before the notary public or presents the document through an online, electronic certified platform pursuant to rules and standards adopted by the secretary of state;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) makes a vow of truthfulness or fidelity on penalty of perjury, based on personal honor and without invoking a deity or using any form of the word "swear";

C. "commission" means both to empower to perform notarial acts and the written evidence of authority to perform those acts;

D. "copy certification" means a notarial act in which a notary public:

(1) is presented with a document that is neither a vital record, a public record nor publicly recordable;

(2) copies or supervises the copying of the document using a photographic or electronic copying process;

(3) compares the document to the copy; and

(4) determines that the copy is accurate and complete;

E. "credible witness" means an honest, reliable and impartial person who personally knows the person appearing

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before a notary public and takes an oath or affirmation from the notary to vouch for that person's identity;

F. "electronic certified platform" means an electronic platform that is permitted by the secretary of state to collect document review and signing information and:

(1) transmits in real time from the principal to a secured data storage:

(a) identity verifying information for the principal;

(b) evidence of document review and signing by the principal; and

(c) any acknowledgments or affirmations made by the principal during the document review prior to the signing;

(2) securely stores all identity verification materials, document review and signing information and other relevant information from the principal and presents it for review by a notary public, allowing the notary to affix an electronic acknowledgment or stamp to the document; and

(3) automatically, after the notarial action is complete, produces a separate, tamper-evident electronic document that identifies the notary public who affixed the electronic notary stamp, identifies the electronic certified platform on which all electronic signing and notarization actions occurred, lists the principal's identity verification

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information and identifies the signed document;

[F-] G. "jurat" means a notarial act in which a person:

(1) at a single time and place

[(-)] appears in person before the notary public and presents a document or presents the document through an online, electronic certified platform pursuant to rules and standards adopted by the secretary of state;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence;

(3) signs the document in the presence of the notary public or through an online, electronic certified platform pursuant to rules and standards adopted by the secretary of state; and

(4) takes an oath or affirmation from the notary public that the person is voluntarily affixing [~~his~~] the person's signature and vouching for the truthfulness or accuracy of the signed document;

[G-] H. "notarial act" means any act that a notary public or other person is empowered to perform pursuant to the Notary Public Act or the Uniform Law on Notarial Acts;

[H-] I. "notarial certificate" means the part of, or attachment to, a notarized document that is completed by the notary public, bears the notary public's signature and seal and

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states the facts attested by the notary public in a particular notarization;

[~~F.~~] J. "notary public" means any person commissioned by the governor to perform official acts pursuant to the Notary Public Act;

[~~J.~~] K. "oath" means a notarial act that is legally equivalent to an affirmation and in which a person at a single time and place:

(1) appears in person before the notary public;

(2) is personally known to the notary public or identified by the notary public through satisfactory evidence; and

(3) makes a vow of truthfulness or fidelity on penalty of perjury while invoking a deity or using any form of the word "swear";

[~~K.~~] L. "official misconduct" means:

(1) a notary public's performance of an act prohibited, or failure to perform an act mandated, by the Notary Public Act or by any other law in connection with a notarial act by the notary public; or

(2) a notary public's performance of an official act in a manner found by the governor to be negligent or against the public interest;

[~~L.~~] M. "personal appearance" means that the

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principal and the notary public are physically close enough to see, hear, communicate with and give identification documents to each other;

[M-] N. "personally known" means familiarity with a person resulting from interactions with that person over a period of time sufficient to dispel any reasonable uncertainty that the person has the identity claimed;

[N-] O. "principal" means:

- (1) a person whose signature is notarized; or
- (2) a person, other than a credible witness, taking an oath or affirmation from the notary public;

[O-] P. "satisfactory evidence of identity" means identification of a person based on:

- (1) at least one current document issued by a federal, state or tribal government agency bearing the photographic image of the person's face and signature and a physical description of the person, though a properly stamped passport without a physical description is acceptable; or

- (2) the oath or affirmation of one credible witness unaffected by the document or transaction who is personally known to the notary public and who personally knows the person, or of two credible witnesses unaffected by the document or transaction who each personally knows the person and shows to the notary public documentary identification as described in Paragraph (1) of this subsection; and

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[P-] Q. "seal" means a device, including a rubber stamp, for affixing on a paper document an image containing the notary public's name, the words "State of New Mexico" and, in the case of a rubber stamp, the commission expiration date."

SECTION 3. Section 14-14-2 NMSA 1978 (being Laws 1993, Chapter 281, Section 2) is amended to read:

"14-14-2. NOTARIAL ACTS.--

A. In taking an acknowledgment, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the person [~~appearing before the officer and~~] making the acknowledgment is the person whose true signature is on the instrument.

B. In taking a verification upon oath or affirmation, the notarial officer shall 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.

C. In witnessing or attesting a signature, the notarial officer shall determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person [~~appearing before the officer and~~] named therein.

D. In certifying or attesting a copy of a document or other item, the notarial officer shall determine that the

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proffered copy is a full, true and accurate transcription or reproduction of the one that was copied.

E. In making or noting a protest of a negotiable instrument, the notarial officer shall determine the matters set forth in Section 55-3-505 NMSA 1978.

F. A notarial officer has satisfactory evidence that a person is the person whose true signature is on a document if that person is:

- (1) personally known to the notarial officer;
- (2) identified upon the oath or affirmation of a credible witness personally known to the notarial officer;

[or]

- (3) identified on the basis of identification documents; or

(4) identified through an online, electronic certified platform to rules and standards adopted by the secretary of state."

SECTION 4. Section 14-15-1 NMSA 1978 (being Laws 1996, Chapter 11, Section 1) is amended to read:

"14-15-1. SHORT TITLE.--~~[This act]~~ Chapter 14, Article 15 NMSA 1978 may be cited as the "Electronic Authentication of Documents Act"."

SECTION 5. Section 14-15-5 NMSA 1978 (being Laws 1996, Chapter 11, Section 5, as amended) is amended to read:

"14-15-5. RULES.--

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A. The secretary of state, in consultation with the department of information technology, [~~commission~~] shall adopt rules and standards to accomplish the purposes of the Electronic Authentication of Documents Act.

B. The rules shall address circumstances under which standards other than adopted standards may be used."

SECTION 6. Section 14-15-6 NMSA 1978 (being Laws 1996, Chapter 11, Section 6, as amended) is amended to read:

"14-15-6. CONTRACTING SERVICES.--The [~~office~~] secretary of state, in consultation with the department of information technology, may contract with a private, public or quasi-public organization for the provision of services under the Electronic Authentication of Documents Act. A contract for services shall comply with rules adopted pursuant to the Electronic Authentication of Documents Act and the provisions of the Public Records Act and the Procurement Code."

SECTION 7. A new section of the Electronic Authentication of Documents Act is enacted to read:

"[NEW MATERIAL] NOTARIZATION AND ACKNOWLEDGMENT--SECURE STORAGE OF ELECTRONICALLY AUTHENTICATED DOCUMENTS.--Any electronically authenticated documents shall be stored in a permanent, tamper-evident electronic format complying with rules and standards set by the secretary of state, in consultation with the department of information technology, together with all information and documents used to provide

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satisfactory evidence of the identity of the person that signed the document."