

**TEXAS STATUTES**

**BUSINESS & COMMERCE CODE  
TITLE 2. COMPETITION AND TRADE PRACTICES  
CHAPTER 17. DECEPTIVE TRADE PRACTICES  
SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND CONSUMER  
PROTECTION**

**Sec. 17.46.**

(a) False, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful and are subject to action by the consumer protection division under Sections 17.47, 17.58, 17.60, and 17.61 of this code.

(b) Except as provided in Subsection (d) of this section, the term “false, misleading, or deceptive acts or practices” includes, but is not limited to, the following acts:

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(28) using the translation into a foreign language of a title or other word, including “attorney,” “immigration consultant,” “immigration expert,” “lawyer,” “licensed,” “notary,” and “notary public,” in any written or electronic material, including an advertisement, a business card, a letterhead, stationery, a website, or an online video, in reference to a person who is not an attorney in order to imply that the person is authorized to practice law in the United States; \*\*\*

**TITLE 10. USE OF TELECOMMUNICATIONS  
SUBTITLE B. ELECTRONIC COMMUNICATIONS  
CHAPTER 322. UNIFORM ELECTRONIC TRANSACTIONS ACT**

**Sec. 322.011. NOTARIZATION AND ACKNOWLEDGMENT.**

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

**CIVIL PRACTICE & REMEDIES CODE  
TITLE 6. MISCELLANEOUS PROVISIONS  
CHAPTER 121. ACKNOWLEDGMENTS AND  
PROOFS OF WRITTEN INSTRUMENTS**

**Sec. 121.001. OFFICERS WHO MAY TAKE ACKNOWLEDGMENTS OR**

**PROOFS.** (a) An acknowledgment or proof of a written instrument may be taken in this state by:

(1) a clerk of a district court;

(2) a judge or clerk of a county court;

(3) a notary public;

(4) a county tax assessor-collector or an employee of the county tax assessor-collector if the instrument is required or authorized to be filed in the office of the county tax assessor-collector; or

(5) an employee of a personal bond office if the acknowledgment or proof of a written

instrument is required or authorized by Article 17.04, Code of Criminal Procedure.

(b) An acknowledgment or proof of a written instrument may be taken outside this state, but inside the United States or its territories, by:

- (1) a clerk of a court of record having a seal;
- (2) a commissioner of deeds appointed under the laws of this state; or
- (3) a notary public.

(c) An acknowledgment or proof of a written instrument may be taken outside the United States or its territories by:

- (1) a minister, commissioner, or charge d'affaires of the United States who is a resident of and is accredited in the country where the acknowledgment or proof is taken;
- (2) a consul-general, consul, vice-consul, commercial agent, vice-commercial agent, deputy consul, or consular agent of the United States who is a resident of the country where the acknowledgment or proof is taken; or
- (3) a notary public or any other official authorized to administer oaths in the jurisdiction where the acknowledgment or proof is taken.

(d) A commissioned officer of the United States Armed Forces or of a United States Armed Forces Auxiliary may take an acknowledgment or proof of a written instrument of a member of the armed forces, a member of an armed forces auxiliary, or a member's spouse. If an acknowledgment or a proof is taken under this subsection, it is presumed, absent pleading and proof to the contrary, that the commissioned officer who signed was a commissioned officer on the date that the officer signed, and that the acknowledging person was a member of the authorized group of military personnel or spouses. The failure of the commissioned officer to attach an official seal to the certificate of acknowledgment or proof of an instrument does not invalidate the acknowledgment or proof.

**Sec. 121.002. CORPORATE ACKNOWLEDGMENTS.** (a) An employee of a corporation is not disqualified because of his employment from taking an acknowledgment or proof of a written instrument in which the corporation has an interest.

(b) An officer who is a shareholder in a corporation is not disqualified from taking an acknowledgment or proof of an instrument in which the corporation has an interest unless:

- (1) the corporation has 1,000 or fewer shareholders; and
- (2) the officer owns more than one-tenth of one percent of the issued and outstanding stock.

**Sec. 121.003. AUTHORITY OF OFFICERS.** In a proceeding to prove a written instrument, an officer authorized by this chapter to take an acknowledgment or a proof of a written instrument is also authorized to:

- (1) administer oaths;
- (2) employ and swear interpreters; and
- (3) issue subpoenas.

**Sec. 121.004. METHOD OF ACKNOWLEDGMENT.** (a) To acknowledge a written instrument for recording, the grantor or person who executed the instrument must appear before an officer and must state that he executed the instrument for the purposes and consideration expressed in it.

- (b) The officer shall:
  - (1) make a certificate of the acknowledgment;
  - (2) sign the certificate; and
  - (3) seal the certificate with the seal of office.

(c) The failure of a notary public to attach an official seal to a certificate of an acknowledgement or proof of a written instrument made outside this state but inside the United States or its territories renders the acknowledgement or proof invalid only if the jurisdiction in which the certificate is made requires the notary public to attach the seal.

(d) The application of an embossed seal is not required on an electronically transmitted certificate of an acknowledgement.

**Sec. 121.005. PROOF OF IDENTITY OF ACKNOWLEDGING PERSON.** (a) An officer may not take the acknowledgment of a written instrument unless the officer knows or has satisfactory evidence that the acknowledging person is the person who executed the instrument and is described in it. An officer may accept, as satisfactory evidence of the identity of an acknowledging person, only:

- (1) the oath of a credible witness personally known to the officer; or
- (2) a current identification card or other document issued by the federal government or any state government that contains the photograph and signature of the acknowledging person.

(b) Except in a short form certificate of acknowledgment authorized by Section 121.008, the officer must note in the certificate of acknowledgment that:

- (1) he personally knows the acknowledging person; or
- (2) evidence of a witness or an identification card or other document was used to identify the acknowledging person; or
- (3) with respect to a deed or other instrument relating to a residential real estate transaction, a current passport issued by a foreign country.

**Sec. 121.006. ALTERATION OF AUTHORIZED FORMS; DEFINITION.** (a) An acknowledgment form provided by this chapter may be altered as circumstances require. The authorization of a form does not prevent the use of other forms. The marital status or other status of the acknowledging person may be shown after the person's name.

(b) In an acknowledgment form 'acknowledged' means:

- (1) in the case of a natural person, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument for the purposes and consideration expressed in it;
- (2) in the case of a person as principal by an attorney-in-fact for the principal, that the attorney-in-fact personally appeared before the officer taking the acknowledgment and that the attorney-in-fact acknowledged executing the instrument as the act of the principal for the purposes and consideration expressed in it;
- (3) in the case of a partnership by a partner or partners acting for the partnership, that the partner or partners personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument as the act of the partnership for the purposes and consideration expressed in it;
- (4) in the case of a corporation by a corporate officer or agent, that the corporate officer or agent personally appeared before the officer taking the acknowledgment and that the corporate officer or agent acknowledged executing the instrument in the capacity

stated, as the act of the corporation, for the purposes and consideration expressed in it; and

(5) in the case of a person acknowledging as a public officer, trustee, executor or administrator of an estate, guardian, or other representative, that the person personally appeared before the officer taking the acknowledgment and acknowledged executing the instrument by proper authority in the capacity stated and for the purposes and consideration expressed in it.

(c) For purposes of Subsection (b), a person may personally appear before the officer taking the acknowledgment by:

(1) physically appearing before the officer; or

(2) appearing by an interactive two-way audio and video communication that meets the online notarization requirements under Subchapter C, Chapter 406, Government Code, and rules adopted under that subchapter.

(d) The acknowledgment form provided by this chapter must include a space for an online notarization as defined by Section 406.101, Government Code, to indicate by which method described by Subsection (c) the acknowledging person appeared before the officer.

**Sec. 121.007. FORM FOR ORDINARY CERTIFICATE OF ACKNOWLEDGMENT.**

The form of an ordinary certificate of acknowledgment must be substantially as follows:

“The State of \_\_\_\_\_,

“County of \_\_\_\_\_,

“Before me \_\_\_\_\_ (here insert the name and character of the officer) on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_ or through \_\_\_\_\_ (description of identity card or other document) to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

(Seal) “Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_.”

**Sec. 121.008. SHORT FORMS FOR CERTIFICATES OF ACKNOWLEDGMENT. (a)**

The forms for certificates of acknowledgment provided by this section may be used as alternatives to other authorized forms. They may be referred to as “statutory forms of acknowledgment.”

(b) Short forms for certificates of acknowledgment include:

(1) For a natural person acting in his own right:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name or names of person or persons acknowledging).

(Signature of officer)

(Title of officer)

My commission expires: \_\_\_\_\_

(2) For a natural person as principal acting by attorney-in-fact:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of attorney-in-fact) as attorney-in-fact on behalf of (name of principal).

(Signature of officer)

(Title of officer)

My commission expires: \_\_\_\_\_

(3) For a partnership acting by one or more partners:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of acknowledging partner or partners), partner(s) on behalf of (name of partnership), a partnership.

(Signature of officer)

(Title of officer)

My commission expires: \_\_\_\_\_

(4) For a corporation:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of officer), (title of officer) of (name of corporation acknowledging) a (state of incorporation) corporation, on behalf of said corporation.

(Signature of officer)

(Title of officer)

My commission expires: \_\_\_\_\_

(5) For a public officer, trustee, executor, administrator, guardian, or other representative:

State of Texas

County of \_\_\_\_\_

This instrument was acknowledged before me on (date) by (name of representative) as (title of representative) of (name of entity or person represented).

(Signature of officer)

(Title of officer)

My commission expires: \_\_\_\_\_

**Sec. 121.009. PROOF OF ACKNOWLEDGMENT BY WITNESS.** (a) To prove a written instrument for recording, at least one of the witnesses who signed the instrument must personally appear before an officer who is authorized by this chapter to take acknowledgments or proofs and must swear:

(1) either that he saw the grantor or person who executed the instrument sign it or that that person acknowledged in the presence of the witness that he executed the instrument for the purposes and consideration expressed in it; and

(2) that he signed the instrument at the request of the grantor or person who executed the instrument.

(b) The officer must make a certificate of the testimony of the witness and must sign and officially seal the certificate.

(c) The officer may take the testimony of a witness only if the officer personally knows or has satisfactory evidence on the oath of a credible witness that the individual testifying is the person who signed the instrument as a witness. If evidence is used to identify the witness who signed the instrument, the officer must note the use of the evidence in the certificate of acknowledgment.

**Sec. 121.010. FORM OF CERTIFICATE FOR PROOF BY WITNESS.** When the execution of a written instrument is proved by a witness, the certificate of the officer must be substantially as follows:

“The State of \_\_\_\_\_,

“County of \_\_\_\_\_.

“Before me, \_\_\_\_\_ (here insert the name and character of the officer), on this day personally appeared \_\_\_\_\_, known to me (or proved to me on the oath of \_\_\_\_\_), to be the person whose name is subscribed as a witness to the foregoing instrument of writing, and after being duly sworn by me stated on oath that he saw \_\_\_\_\_, the grantor or person who executed the foregoing instrument, subscribe the same (or that the grantor or person who executed such instrument of writing acknowledged in his presence that he had executed the same for the purposes and consideration therein expressed), and that he had signed the same as a witness at the request of the grantor (or person who executed the same.)

(Seal) “Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, A.D., \_\_\_\_\_.”

**Sec. 121.011. PROOF OF ACKNOWLEDGMENT BY HANDWRITING.** (a) The execution of an instrument may be established for recording by proof of the handwriting of persons who signed the instrument only if:

- (1) the grantor of the instrument and all of the witnesses are dead;
- (2) the grantor and all of the witnesses are not residents of this state;
- (3) the residences of the grantor and the witnesses are unknown to the person seeking to prove the instrument and cannot be ascertained;
- (4) the witnesses have become legally incompetent to testify; or
- (5) the grantor of the instrument refuses to acknowledge the execution of the instrument and all of the witnesses are dead, not residents of this state, or legally incompetent or their places of residence are unknown.

(b) If the grantor or person who executed the instrument signed his name to the instrument, its execution must be proved by evidence of the handwriting of that person and at least one witness who signed the instrument. If the grantor or person who executed the instrument signed the instrument by making his mark, its execution must be proved by the handwriting of at least two of the witnesses who signed the instrument.

(c) Evidence taken for proof of handwriting must give the residence of the testifying witness. A testifying witness must have known the person whose handwriting is being proved and must be well acquainted with the handwriting in question and recognize it as genuine.

(d) Evidence offered for proof of handwriting must be given in writing by the deposition or affidavit of two or more disinterested persons. The evidence must satisfactorily prove to the officer each of the requirements provided by this section. The officer taking the proof must certify the witnesses' testimony. The officer must sign, officially seal, and attach this certificate to the instrument with the depositions or

affidavits of the witnesses.

**Sec. 121.012. RECORD OF ACKNOWLEDGMENT.** (a) An officer authorized by law to take an acknowledgment or proof of a written instrument required or permitted by law to be recorded must enter in a well-bound book and officially sign a short statement of each acknowledgment or proof. The statement must contain the date that the acknowledgment or proof was taken, the date of the instrument, and the names of the grantor and grantee of the instrument.

(b) If the execution of the instrument is acknowledged by the grantor of the instrument, the statement must also contain:

(1) the grantor's mailing address;

(2) whether the grantor is personally known to the officer; and

(3) if the grantor is unknown to the officer, the name and mailing address of the person who introduced the grantor to the officer, if any.

(c) If the execution of the instrument is proved by a witness who signed the instrument, the statement must also contain:

(1) the name of the witness;

(2) the mailing address of the witness;

(3) whether the witness is personally known to the officer; and

(4) if the witness is unknown to the officer, the name and mailing address of the person who introduced the witness to the officer, if any.

(d) If land is charged or conveyed by the instrument, the statement must also contain:

(1) the name of the original grantee; and

(2) the name of the county in which the land is located.

(e) The statements of acknowledgment recorded by the officer are original public records, open for public inspection and examination at all reasonable times. The officer must deliver the book to his successor in office.

**Sec. 121.013. SUBPOENA OF WITNESS; ATTACHMENT.** (a) On the sworn application of a person interested in the proof of an instrument required or permitted by law to be recorded, stating that a witness to the instrument refuses to appear and testify regarding the execution of the instrument and that the instrument cannot be proven without the evidence of the witness, an officer authorized to take proofs of instruments shall issue a subpoena requiring the witness to appear before the officer and testify about the execution of the instrument.

(b) If the witness fails to obey the subpoena, the officer has the same powers to enforce the attendance and compel the answers of the witness as does a district judge. Attachment may not be issued, however, unless the witness receives or is tendered the same compensation that is made to witnesses in other cases. An officer may not require the witness to leave his county of residence, but if the witness is temporarily present in the county where the execution of the instrument is sought to be proven for registration, he may be required to appear.

**Sec. 121.014. ACTION FOR DAMAGES.** A person injured by the failure, refusal, or neglect of an officer to comply with a provision of this chapter has a cause of action against the officer to recover damages resulting from the failure, refusal, or neglect of the officer.

**Sec. 121.015. PRIVATE SEAL OR SCROLL NOT REQUIRED.** A private seal or scroll may not be required on a written instrument other than an instrument made by a corporation.

**Sec. 121.016. EFFECT OF OTHER LAW.** To the extent that a provision of this chapter conflicts with Subchapter C, Chapter 406, Government Code, that subchapter controls with respect to an online notarization as defined by Section 406.101, Government Code.

**FINANCE CODE**  
**TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES**  
**SUBTITLE A. BANKS**  
**CHAPTER 59. MISCELLANEOUS PROVISIONS**  
**SUBCHAPTER B. SAFE DEPOSIT BOXES**

**Sec. 59.107. NONEMERGENCY OPENING AND RELOCATION.** (a) A safe deposit company may not relocate a safe deposit box rented for a term of at least six months if the box rental is not delinquent or open a safe deposit box to relocate its contents to another safe deposit box or other location except:

- (1) in the presence of the lessee;
- (2) with the lessee's written authorization; or
- (3) as otherwise provided by this section or Section 59.108.

(b) A safe deposit box may not be relocated under this section unless the storage conditions at the new location are at least as secure as the conditions at the original box location.

(c) Not later than the 30th day before the scheduled date of a nonemergency relocation, the safe deposit company shall give notice of the relocation to each lessee of the safe deposit box. The notice must state the scheduled date and time of the relocation and whether the box will be opened during the relocation.

(d) A lessee may personally supervise the relocation or authorize the relocation in writing if notice is given to each lessee.

(e) If during the relocation the box is opened and a lessee does not personally supervise the relocation or has not authorized the relocation in writing, two employees, at least one of whom is an officer or manager of the safe deposit company and at least one of whom is a notary public, shall inventory the contents of the box in detail. The safe deposit company shall notify each lessee of the new box number or location not later than the 30th day after the date of the relocation and shall include a signed and notarized copy of the inventory report. The cost of a certified mailing other than the first notice sent in connection with each relocation may be treated as box rental due at the expiration of the rental term.

(f) This section does not apply to a relocation of a safe deposit box within the same building.

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**Sec. 59.109. TERMINATION OF RENTAL; LIEN; SALE OF CONTENTS.** (a) A safe deposit company may not terminate an agreement for the rental of a safe deposit box unless:

- (1) the safe deposit company has delivered or sent to the lessee a notice not later than



the 90th day before the date of the termination and has provided the lessee an opportunity to retrieve the contents during normal business hours throughout the duration of the notice period; or

(2) the payment for the rental of a safe deposit box is delinquent for at least six months, and the lessee fails to pay the rent due following notice provided under Subsection (a-1).

(a-1) If the payment for the rental of a safe deposit box is delinquent for at least six months, or if the rental agreement is otherwise terminated, the safe deposit company shall send notice to each lessee that the company will remove the contents of the box if the rent is not paid or, if the rental agreement is otherwise terminated, the contents are not retrieved before the date specified in the notice, which may not be earlier than the 60th day after the date the notice is delivered or sent.

(a-2) If the delinquent rent is not paid or, if the rental agreement is otherwise terminated, the contents are not retrieved before the date specified in the notice, the safe deposit company may open the box in the presence of two employees, at least one of whom is an officer or manager of the safe deposit company and at least one of whom is a notary public. The safe deposit company shall inventory the contents of the box in detail as provided by the comptroller's reporting instructions and place the contents of the box in a sealed envelope or container bearing the name of the lessee.

(b) The safe deposit company has a lien on the contents of the box for an amount equal to the rental owed for the box and the cost of opening the box. The safe deposit company may retain possession of the contents not later than two years from the date of the opening of the box plus a reasonable period to dispose of the contents of the box. If the rental and the cost of opening the box are not paid before the second anniversary of the date the box was opened, or if the rental agreement is being terminated for a reason other than delinquent payment, and the lessee has failed to retrieve the contents in a reasonable period after notice of the termination has been sent or delivered, the safe deposit company may sell all or part of the contents at public auction in the manner and with the notice prescribed by Section 51.002, Property Code, for the sale of real property under a deed of trust. Any unsold contents of the box and any excess proceeds from a sale of contents shall be remitted to the comptroller as provided by Chapters 72-75, Property Code.

**GOVERNMENT CODE**  
**TITLE 4. EXECUTIVE BRANCH**  
**SUBTITLE A. EXECUTIVE OFFICERS**  
**CHAPTER 406. NOTARY PUBLIC; COMMISSIONER OF DEEDS**  
**SUBCHAPTER A. NOTARY PUBLIC**

**Sec. 406.001. APPOINTMENTS.** (a) The secretary of state may appoint a notary public at any time.

(b) The secretary of state shall assign each notary public an identifying number and keep a record of the number assigned to each notary public.

**Sec. 406.002. TERM.** The term of a notary public expires four years after the date the notary public qualifies.

**Sec. 406.003. JURISDICTION.** A notary public has statewide jurisdiction.

**Sec. 406.004. ELIGIBILITY.** (a) Each person appointed and commissioned as a notary public shall be at least 18 years of age and a resident of the State of Texas and must not have been convicted of a felony or crime involving moral turpitude.

(b) If the secretary of state discovers, at any time, that an applicant to be a notary public or a commissioned notary public is not eligible to serve as a notary public, the secretary of state shall:

- (1) reject the notary application; or
- (2) revoke the notary commission.

**Sec. 406.005. APPOINTMENT PROCEDURE--STATEMENT.** (a) Each person to be appointed a notary public shall submit an application to the secretary of state on a form prescribed by the secretary of state. The application must satisfy the secretary of state that the applicant is qualified. The application must state:

- (1) the applicant's name to be used in acting as a notary public;
- (2) the applicant's post office address;
- (3) the applicant's county of residence;
- (4) the applicant's date of birth;
- (5) the applicant's driver's license number or the number of other official state-issued identification; and
- (6) the applicant's social security number.

(b) The applicant shall also execute the statement of officers as required by Section 1, Article XVI, Texas Constitution.

(c) Repealed by Acts 2003, 78th Leg., ch. 1211, Sec. 1.

**Sec. 406.006. QUALIFICATION.** An individual qualifies by:

- (1) properly completing the application form;
- (2) executing the statement;
- (3) providing the bond, if required;
- (4) paying the required filing fees; and
- (5) meeting the eligibility requirements.

**Sec. 406.007. FEES PAID TO SECRETARY OF STATE.** (a) The applicant must submit to the secretary of state:

- (1) a fee of \$10 for approving and filing the bond of the notary public, if required; and
- (2) a fee of \$1 to be appropriated to and used by the secretary of state only for hiring an investigator and for preparing and distributing the materials required to be distributed under Section 406.008.

(b) The secretary of state shall charge for use of the state a fee of \$10 for a notary public commission. The applicant must pay the fee in advance to the secretary of state. Acts 1987, 70th Leg., ch. 147, Sec. 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 4, Sec. 2.14(a), eff. Sept. 1, 1989; Acts 2003, 78th Leg., ch. 285, Sec. 15, eff. Sept. 1, 2003.

**Sec. 406.008. COMMISSION; NOTARY MATERIALS.** (a) Immediately after the qualification of a notary public, the secretary of state shall send notice of appointment along with a commission to the notary public. The commission is effective as of the date of qualification.

(b) When the commission is issued, the secretary of state shall supply the notary

public with:

- (1) materials outlining the powers and duties of the office;
  - (2) a list of prohibited acts;
  - (3) sample forms for an acknowledgment, jurat, and verification and for the administering of an oath, protest, and deposition; and
  - (4) the identifying number assigned to the notary public.
- (c) Repealed by Acts 1995, 74th Leg., ch. 719, Sec. 10, eff. Jan. 1, 1996.

**Sec. 406.009. REJECTION OF APPOINTMENT; SUSPENSION OR REVOCATION OF COMMISSION.** (a) The secretary of state may, for good cause, reject an application or suspend or revoke the commission of a notary public.

(b) An action by the secretary of state under this section is subject to the rights of notice, hearing, adjudication, and appeal.

(c) An appeal under this section is to the district court of Travis County. The secretary of state has the burden of proof, and the trial is conducted de novo.

(d) In this section, "good cause" includes:

- (1) a false statement knowingly made in an application;
- (2) the failure to comply with Section 406.017;
- (3) a final conviction for a violation of a law concerning the regulation of the conduct of notaries public in this or another state;
- (4) the imposition on the notary public of an administrative, criminal, or civil penalty for a violation of a law or rule prescribing the duties of a notary public; or
- (5) performing any notarization when the person for whom the notarization is performed did not personally appear before the notary at the time the notarization is executed.

(e) The following may not be considered a conviction for the purposes of determining eligibility and good cause:

- (1) a dismissal of a proceeding against the defendant and discharge of the defendant before an adjudication of guilt; and
- (2) a finding of guilt that has been set aside.

**Sec. 406.010. BOND; OATH.** (a) Each person to be appointed a notary public shall, before entering the official duties of office, execute a bond in the amount of \$10,000 with a solvent surety company authorized to do business in this state as a surety. The bond must be approved by the secretary of state, payable to the governor, and conditioned on the faithful performance of the duties of office. The secretary of state has the authority to accept an electronic filing of the notary public bond if an agreement has been made with the surety company.

(b) The notary bond shall be deposited in the office of the secretary of state, is not void on first recovery, and may be sued on in the name of the injured party from time to time until the whole amount of the bond is recovered.

(c) A notary public, before entering on the duties of office, shall take the official oath required by Section 1, Article XVI, Texas Constitution.

(d) The oath shall be signed and sworn to or affirmed by the notary public in the presence of a notary public or other person authorized to administer oaths in this state. A notary public cannot execute his or her own oath of office.

(e) The secretary of state shall provide an oath of office form along with the

commission and educational materials.

(f) Subsections(a) and(b) do not apply to a person whose services as a notary public are performed primarily as a state officer or employee.

**Sec. 406.011. REAPPOINTMENT.** (a) Not earlier than 90 days prior to the expiration date of the notary's term, a notary public may apply for reappointment on submission of a new application to the secretary of state.

(b) A notary public who is not reappointed on or before the expiration date of the term the notary public is serving will be appointed for a new term expiring four years from the date of qualification.

**Sec. 406.012. INSPECTION OF RECORDS.** All records concerning the appointment and qualification of the notary public shall be kept in the office of the secretary of state. The records are public information.

**Sec. 406.013. SEAL.** (a) A notary public shall provide a seal of office that clearly shows, when embossed, stamped, or printed on a document, the words "Notary Public, State of Texas" around a star of five points, the notary public's name, the notary public's identifying number, and the date the notary public's commission expires. The notary public shall authenticate all official acts with the seal of office.

(b) The seal may be a circular form not more than two inches in diameter or a rectangular form not more than one inch in width and 2-1/2 inches in length. The seal must have a serrated or milled edge border.

(c) The seal must be affixed by a seal press or stamp that embosses or prints a seal that legibly reproduces the required elements of the seal under photographic methods. An indelible ink pad must be used for affixing by a stamp the impression of a seal on an instrument to authenticate the notary public's official act.

(d) Subsection(c) does not apply to an electronically transmitted authenticated document, except that an electronically transmitted authenticated document must legibly reproduce the required elements of the seal.

**Sec. 406.014. NOTARY RECORDS.** (a) A notary public other than a court clerk notarizing instruments for the court shall keep in a book a record of:

- (1) the date of each instrument notarized;
- (2) the date of the notarization;
- (3) the name of the signer, grantor, or maker;
- (4) the signer's, grantor's, or maker's mailing address;

(5) whether the signer, grantor, or maker is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and mailing address of the individual introducing the signer, grantor, or maker;

(6) if the instrument is proved by a witness, the mailing address of the witness, whether the witness is personally known by the notary public or was introduced to the notary public and, if introduced, the name and mailing address of the individual introducing the witness;

(7) the name and mailing address of the grantee;

(8) if land is conveyed or charged by the instrument, the name of the original grantee

and the county where the land is located; and

(9) a brief description of the instrument.

(b) Entries in the notary's book are public information.

(c) A notary public shall, on payment of all fees, provide a certified copy of any record of official acts in the notary public's book of record to any person requesting the copy.

(d) A notary public who administers an oath pursuant to Article 45.019, Code of Criminal Procedure, is exempt from the requirement in Subsection(a) of recording that oath.

(e) A notary public may maintain the records required by Subsection(a) electronically in a computer or other storage device.

**Sec. 406.015. COPIES CERTIFIED BY COUNTY CLERK.** (a) A copy of a record, declaration, protest, or other official act of a notary public may be certified by the county clerk with whom the instrument is deposited.

(b) A copy of an instrument certified by the county clerk under Subsection(a) has the same authority as if certified by the notary public by whom the record, declaration, protest, or other official act was originally made.

**Sec. 406.016. AUTHORITY.** (a) A notary public has the same authority as the county clerk to:

(1) take acknowledgments or proofs of written instruments;

(2) protest instruments permitted by law to be protested;

(3) administer oaths;

(4) take depositions; and

(5) certify copies of documents not recordable in the public records.

(b) A notary public shall sign an instrument in Subsection(a) in the name under which the notary public is commissioned.

(c) A notary public may not issue an identification card.

(d) A notary public not licensed to practice law in this state may not give legal advice or accept fees for legal advice.

**Sec. 406.0165. SIGNING DOCUMENT FOR INDIVIDUAL WITH DISABILITY.** (a) A notary may sign the name of an individual who is physically unable to sign or make a mark on a document presented for notarization if directed to do so by that individual, in the presence of a witness who has no legal or equitable interest in any real or personal property that is the subject of, or is affected by, the document being signed. The notary shall require identification of the witness in the same manner as from an acknowledging person under Section 121.005, Civil Practice and Remedies Code.

(b) A notary who signs a document under this section shall write, beneath the signature, the following or a substantially similar sentence: "Signature affixed by notary in the presence of (name of witness), a disinterested witness, under Section 406.0165, Government Code."

(c) A signature made under this section is effective as the signature of the individual on whose behalf the signature was made for any purpose. A subsequent bona fide purchaser for value may rely on the signature of the notary as evidence of the individual's consent to execution of the document.

(d) In this section, “disability” means a physical impairment that impedes the ability to sign or make a mark on a document.

**Sec. 406.017. REPRESENTATION AS ATTORNEY.** (a) A person commits an offense if the person is a notary public and the person:

(1) states or implies that the person is an attorney licensed to practice law in this state;

(2) solicits or accepts compensation to prepare documents for or otherwise represent the interest of another in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States, United States citizenship, or related matters;

(3) solicits or accepts compensation to obtain relief of any kind on behalf of another from any officer, agency, or employee of this state or the United States;

(4) uses the phrase “notario” or “notario publico” to advertise the services of a notary public, whether by signs, pamphlets, stationery, or other written communication or by radio or television; or

(5) advertises the services of a notary public in a language other than English, whether by signs, pamphlets, stationery, or other written communication or by radio or television, if the person does not post or otherwise include with the advertisement a notice that complies with Subsection(b).

(a-1) A person does not violate this section by offering or providing language translation or typing services and accepting compensation.

(b) The notice required by Subsection(a)(5) must state that the notary public is not an attorney and must be in English and in the language of the advertisement and in letters of a conspicuous size. If the advertisement is by radio or television, the statement may be modified, but must include substantially the same message. The notice must include the fees that a notary public may charge and the following statement:

“I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN TEXAS AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

(c) It is an exception to prosecution under this section that, at the time of the conduct charged, the person is licensed to practice law in this state and in good standing with the State Bar of Texas.

(d) Except as provided by Subsection(e) of this section, an offense under this section is a Class A misdemeanor.

(e) An offense under this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under this section.

(f) Failure to comply with this section is, in addition to a violation of any other applicable law of this state, a deceptive trade practice actionable under Chapter 17, Business & Commerce Code.

**Sec. 406.018. REMOVAL FROM OFFICE.** (a) A notary public guilty of wilful neglect of duty or malfeasance in office may be removed from office in the manner provided by law.

(b) A notary public indicted for and convicted of a wilful neglect of duty or official misconduct shall be removed from office. The court shall include the order for removal as part of its judgment.

**Sec. 406.019. CHANGE OF ADDRESS.** A notary public shall notify the secretary of state of a change of the notary public’s address not later than the 10th day after the date on which the change is made.

**Sec. 406.020. REMOVAL FROM STATE.** A notary public who removes his residence from this state vacates the office.

**Sec. 406.021. REMOVAL FROM PRECINCT.** An ex officio notary public who moves permanently from the notary public's precinct vacates the office.

**Sec. 406.022. EFFECT OF VACANCY.** If the office of a notary public becomes vacant due to resignation, removal, or death, the county clerk of the county in which the notary public resides shall obtain the record books and public papers belonging to the office of the notary public and deposit them in the county clerk's office.

**Sec. 406.023. ADMINISTRATION AND ENFORCEMENT.** (a) The secretary of state shall adopt rules necessary for the administration and enforcement of this subchapter. The rules must be consistent with the provisions of this subchapter.

(b) The secretary of state may employ an investigator to aid in the enforcement of this subchapter.

(c) The secretary of state may provide for the appointment of county clerks as deputy custodians for the limited authentication of notary public records deposited in the clerks' offices.

**Sec. 406.024. FEES CHARGED BY NOTARY PUBLIC.** (a) A notary public or its employer may charge the following fees:

(1) for protesting a bill or note for nonacceptance or nonpayment, register and seal, a fee of \$4;

(2) for each notice of protest, a fee of \$1;

(3) for protesting in all other cases, a fee of \$4;

(4) for certificate and seal to a protest, a fee of \$4;

(5) for taking the acknowledgment or proof of a deed or other instrument in writing, for registration, including certificate and seal, a fee of \$6 for the first signature and \$1 for each additional signature;

(6) for administering an oath or affirmation with certificate and seal, a fee of \$6;

(7) for a certificate under seal not otherwise provided for, a fee of \$6;

(8) for a copy of a record or paper in the notary public's office, a fee of 50 cents for each page;

(9) for taking the deposition of a witness, 50 cents for each 100 words;

(10) for swearing a witness to a deposition, certificate, seal, and other business connected with taking the deposition, a fee of \$6; and

(11) for a notarial act not provided for, a fee of \$6.

(b) A notary public may charge a fee only for an acknowledgment or official act under Subsection(a). The fee charged may not exceed the fee authorized by Subsection(a).

**Sec. 406.025. SIGNATURE ON COMMISSIONS AFTER CHANGE IN OFFICE.** If the governor or secretary of state ceases to hold or perform the duties of office, existing stocks of commissions bearing the person's printed name, signature, or facsimile signature may be used until they are exhausted, and the person succeeding to the office or the duties of the office shall have the commissions issued with:

- (1) the obsolete printed name, signature, or facsimile signature struck through;
- (2) the successor's printed name submitted for the obsolete printed name, signature, or facsimile signature; and
- (3) the inscription "Printed name authorized by law" near the successor's printed name.

**Sec. 406.026. ELECTRONIC NOTARIZATION.** In a proceeding filed under Title 5, Family Code, if a signature is required to be notarized, acknowledged, verified, or made under oath, the requirement may be satisfied if the electronic signature of the person authorized to perform that act, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature required to be notarized, acknowledged, verified, or made under oath.

### **SUBCHAPTER C. ONLINE NOTARY PUBLIC**

**Sec. 406.101. DEFINITIONS.** In this subchapter:

(1) "Credential analysis" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

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

(3) "Electronic document" means information that is created, generated, sent, communicated, received, or stored by electronic means.

(4) "Electronic notarial certificate" means the portion of a notarized electronic document that is completed by an online notary public and contains the following:

(A) the online notary public's electronic signature, electronic seal, title, and commission expiration date;

(B) other required information concerning the date and place of the online notarization; and

(C) the facts attested to or certified by the online notary public in the particular notarization.

(5) "Electronic seal" means information within a notarized electronic document that confirms the online notary public's name, jurisdiction, identifying number, and commission expiration date and generally corresponds to information in notary seals used on paper documents.

(6) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document.

(7) "Identity proofing" means a process or service operating according to criteria approved by the secretary of state through which a third person affirms the identity of an individual through review of personal information from public and proprietary data sources.

(8) "Notarial act" means the performance by an online notary public of a function authorized under Section 406.016.

(9) "Online notarization" means a notarial act performed by means of two-way video and audio conference technology that meets the standards adopted under Section 406.104.



(10) “Online notary public” means a notary public who has been authorized by the secretary of state to perform online notarizations under this subchapter.

(11) “Principal” means an individual:

(A) whose electronic signature is notarized in an online notarization; or

(B) taking an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization.

(12) “Remote presentation” means transmission to the online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the online notary public to:

(A) identify the individual seeking the online notary public’s services; and

(B) perform credential analysis.

**Sec. 406.102. APPLICABILITY OF SUBCHAPTER.** This subchapter applies only to an online notarization.

**Sec. 406.103. RULEMAKING.** The secretary of state may adopt rules necessary to implement this subchapter, including rules to facilitate online notarizations.

**Sec. 406.104. STANDARDS FOR ONLINE NOTARIZATION.**

(a) The secretary of state by rule shall develop and maintain standards for online notarization in accordance with this subchapter, including standards for credential analysis and identity proofing.

(b) The secretary of state may confer with the Department of Information Resources or other appropriate state agency on matters relating to equipment, security, and technological aspects of the online notarization standards.

**Sec. 406.105. APPLICATION; QUALIFICATIONS.**

(a) A notary public or an applicant for appointment as a notary public under Subchapter A may apply to the secretary of state to be appointed and commissioned as an online notary public in the manner provided by this section.

(b) A person qualifies to be appointed as an online notary public by:

(1) satisfying the qualification requirements for appointment as a notary public under Subchapter A;

(2) paying the application fee described by Subsection (d); and

(3) electronically submitting to the secretary of state an application in the form prescribed by the secretary of state that satisfies the secretary of state that the applicant is qualified.

(c) The application required by Subsection (b) must include:

(1) the applicant’s name to be used in acting as a notary public;

(2) a certification that the applicant will comply with the secretary of state’s standards developed under Section 406.104; and

(3) an e-mail address of the applicant.

(d) The secretary of state may charge a fee for an application submitted under this section in an amount necessary to administer this subchapter.

**Sec. 406.106. PERFORMANCE OF NOTARIAL ACTS.** An online notary public:

(1) is a notary public for purposes of Subchapter A and is subject to that subchapter to

the same extent as a notary public appointed and commissioned under that subchapter;  
(2) may perform notarial acts as provided by Subchapter A in addition to performing online notarizations; and  
(3) may perform an online notarization authorized under this subchapter.

**Sec. 406.107. AUTHORITY TO PERFORM ONLINE NOTARIZATIONS.** An online notary public has the authority to perform any of the functions authorized under Section 406.016 as an online notarization.

**Sec. 406.108. ELECTRONIC RECORD OF ONLINE NOTARIZATIONS.**

(a) An online notary public shall keep a secure electronic record of electronic documents notarized by the online notary public. The electronic record must contain for each online notarization:

- (1) the date and time of the notarization;
  - (2) the type of notarial act;
  - (3) the type, the title, or a description of the electronic document or proceeding;
  - (4) the printed name and address of each principal involved in the transaction or proceeding;
  - (5) evidence of identity of each principal involved in the transaction or proceeding in the form of:
    - (A) a statement that the person is personally known to the online notary public;
    - (B) a notation of the type of identification document provided to the online notary public;
    - (C) a record of the identity verification made under Section 406.110, if applicable; or
    - (D) the following:
      - (i) the printed name and address of each credible witness swearing to or affirming the person's identity; and
      - (ii) for each credible witness not personally known to the online notary public, a description of the type of identification documents provided to the online notary public;
  - (6) a recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and
  - (7) the fee, if any, charged for the notarization.
- (b) The online notary public shall take reasonable steps to:
- (1) ensure the integrity, security, and authenticity of online notarizations;
  - (2) maintain a backup for the electronic record required by Subsection(a); and
  - (3) protect the backup record from unauthorized use.
- (c) The electronic record required by Subsection (a) shall be maintained for at least five years after the date of the transaction or proceeding.

**Sec. 406.109. USE OF ELECTRONIC RECORD, SIGNATURE, AND SEAL.**

(a) An online notary public shall take reasonable steps to ensure that any registered device used to create an electronic signature is current and has not been revoked or terminated by the device's issuing or registering authority.

(b) An online notary public shall keep the online notary public's electronic record, electronic signature, and electronic seal secure and under the online notary public's exclusive control. The online notary public may not allow another person to use the online notary public's electronic record, electronic signature, or electronic seal.

(c) An online notary public may use the online notary public's electronic signature only for performing online notarization.

(d) An online notary public shall attach the online notary public's electronic signature and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(e) An online notary public shall immediately notify an appropriate law enforcement agency and the secretary of state of the theft or vandalism of the online notary public's electronic record, electronic signature, or electronic seal. An online notary public shall immediately notify the secretary of state of the loss or use by another person of the online notary public's electronic record, electronic signature, or electronic seal.

**Sec. 406.110. ONLINE NOTARIZATION PROCEDURES.**

(a) An online notary public may perform an online notarization authorized under Section 406.107 that meets the requirements of this subchapter and rules adopted under this subchapter regardless of whether the principal is physically located in this state at the time of the online notarization.

(b) In performing an online notarization, an online notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using two-way video and audio conference technology that meets the requirements of this subchapter and rules adopted under this subchapter. Identity may be verified by:

(1) the online notary public's personal knowledge of the person creating the electronic signature; or

(2) each of the following:

(A) remote presentation by the person creating the electronic signature of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person;

(B) credential analysis of the credential described by Paragraph (A); and

(C) identity proofing of the person described by Paragraph (A).

(c) The online notary public shall take reasonable steps to ensure that the two-way video and audio communication used in an online notarization is secure from unauthorized interception.

(d) The electronic notarial certificate for an online notarization must include a notation that the notarization is an online notarization.

**Sec. 406.111. FEES FOR ONLINE NOTARIZATION.** An online notary public or the online notary public's employer may charge a fee in an amount not to exceed \$25 for performing an online notarization in addition to any other fees authorized under Section 406.024.

**Sec. 406.112. TERMINATION OF ONLINE NOTARY PUBLIC'S COMMISSION.**

(a) Except as provided by Subsection(b), an online notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the online notary public's official electronic signature or seal. The online notary public shall certify compliance with this subsection to the secretary of state.

(b) A former online notary public whose commission terminated for a reason other

than revocation or a denial of renewal is not required to destroy the items described by Subsection(a) if the former online notary public is recommissioned as an online notary public with the same electronic signature and seal within three months after the former online notary public's former commission terminated.

**Sec. 406.113. WRONGFUL POSSESSION OF SOFTWARE OR HARDWARE; CRIMINAL OFFENSE.**

(a) A person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software, or hardware enabling an online notary public to affix an official electronic signature or seal commits an offense.

(b) An offense under this section is a Class A misdemeanor.

**PROPERTY CODE  
TITLE 3. PUBLIC RECORDS  
CHAPTER 13. RECORDING OF INSTRUMENTS**

**Sec. 12.0011. INSTRUMENTS CONCERNING PROPERTY: ORIGINAL SIGNATURE REQUIRED FOR CERTAIN INSTRUMENTS.** (a) For the purposes of this section, "paper document" means a document received by a county clerk in a form that is not electronic.

(b) A paper document concerning real or personal property may not be recorded or serve as notice of the paper document unless:

(1) the paper document contains an original signature or signatures that are acknowledged, sworn to with a jurat, or proved according to law;

(2) the paper document is attached as an exhibit to a paper affidavit or other document that has an original signature or signatures that are acknowledged, sworn to with a jurat, or proved according to law; or

(3) the paper document is a tangible copy of an electronic record that has been declared to be a true and correct copy of the electronic record as provided by Section 12.0013 by a notary public or other officer who may take an acknowledgment or proof of a written instrument under Section 121.001, Civil Practice and Remedies Code.

(c) An original signature may not be required for an electronic instrument or other document that complies with the requirements of Chapter 15 of this code, Chapter 195, Local Government Code, Chapter 322, Business & Commerce Code, or other applicable law.

(d) This section does not apply to a child support lien notice issued by the Title IV-D agency under Chapter 157, Family Code. For purposes of this subsection, "Title IV-D agency" has the meaning assigned by Section 101.033, Family Code.

(e) This section does not apply to a notice of sale under Section 51.065, Natural Resources Code, or a land award under Section 51.066, Natural Resources Code.

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**Sec. 12.0013. RECORDATION OF PAPER OR TANGIBLE COPY OF ELECTRONIC RECORD.** (a) In this section:

(1) "Document" 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.

(2) "Electronic," "electronic record," and "electronic signature" have the meanings assigned by Section 322.002, Business & Commerce Code.

(b) A county clerk shall record a paper or tangible copy of an electronic record that is otherwise eligible under state law to be recorded in the real property records if the paper or tangible copy of the electronic record:

(1) contains an image of an electronic signature or signatures that are acknowledged, sworn to with a jurat, or proved according to law; and

(2) has been declared by a notary public or other officer who may take an acknowledgment or proof under Section 121.001, Civil Practice and Remedies Code, to be a true and correct copy of the electronic record as provided by Subsection (d).

(c) A document that is a paper or tangible copy of an electronic record and is printed and declared to be a true and correct copy as provided by Subsection (d) satisfies any requirement of law that, as a condition for recording, the document:

(1) be an original or be in writing;

(2) be signed or contain an original signature, if the document contains an image of an electronic signature of the person required to sign the document; and

(3) be notarized, acknowledged, verified, witnessed, made under oath, sworn to with a jurat, or proved according to law, if the document contains an image of an electronic signature of the person authorized to perform that act and all other information required to be included.

(d) A notary public or other officer who may take an acknowledgment or proof under Section 121.001, Civil Practice and Remedies Code, may declare that a paper or tangible copy of an electronic record is a true and correct copy of an electronic record by:

(1) executing and attaching an official seal to a tangible paper declaration under penalty of perjury; and

(2) affixing or attaching the declaration to the printed paper or tangible copy of an electronic record.

(e) The form of declaration required under Subsection (d) must be substantially as follows:

#### DECLARATION OF AUTHENTICITY

State of \_\_\_\_\_

County of \_\_\_\_\_

The attached document, \_\_\_\_\_ (insert title), dated \_\_\_\_\_ and containing \_\_\_ pages, is a true and correct copy of an electronic record printed by me or under my supervision. At the time of printing, no security features present on the electronic record indicated any changes or errors in an electronic signature or other information in the electronic record after the electronic record's creation or execution. This declaration is made under penalty of perjury.

Signed this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_ (signature of notary public or other officer)

(seal of office)

\_\_\_\_\_ (printed name of notary public or other officer)

My commission expires: \_\_\_\_\_

### CHAPTER 15. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

**Sec. 15.004. VALIDITY OF ELECTRONIC DOCUMENTS.** (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 that

complies with the requirements of this chapter.

(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.

## **TEXAS ADMINISTRATIVE CODE**

### **TITLE 1. ADMINISTRATION PART 4. OFFICE OF THE SECRETARY OF STATE CHAPTER 87. NOTARY PUBLIC SUBCHAPTER A. GENERAL PROVISIONS**

#### **§87.1. Definitions.**

Words and terms defined in the Texas Government Code, Chapter 406, shall have the same meaning in this chapter. For the purposes of this chapter the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Credential means a valid, unexpired identification card or other document issued by the federal government or any state government, as defined by §311.05 of the Government Code, that contains the photograph and signature of the principal. With respect to a deed or other instrument relating to a residential real estate transaction, credential also includes a current passport issued by a foreign country.

(2) Credential Analysis means the process which complies with Subchapter H of this chapter by which the validity of a government-issued identification credential is affirmed by a third party through review of public and proprietary data sources.

(3) Digital Certificate means a computer-based record or electronic file issued to a notary public or applicant for appointment as a notary public for the purpose of creating an official electronic signature. The digital certificate shall be kept in the exclusive control of the notary public.

(4) Identity Proofing means the process which complies with Subchapter H of this chapter by which the identity of an individual is affirmed by a third party through review of public and proprietary data sources.

(5) Online Notary Public means an individual commissioned by the secretary of state as an online notary. An online notary has authority:

(A) as a traditional notary public; and

(B) to perform an online notarization as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

(6) Personal appearance or personally appear means:

(A) when performing a notarization other than an online notarization, the principal for whom the notarization is being performed physically appeared before the notary public at the time of the notarization in a manner permitting the notary public and the principal to see, hear, communicate and give identification credentials to each other; and

(B) for an online notarization, the principal for whom the notarization is being

performed appears by an interactive two-way audio and video communication that meets the online notarization requirements as provided by Subchapter C, Chapter 406 of the Government Code and this chapter.

(7) Principal means an individual:

(A) whose signature is notarized in a traditional or online notarization; or

(B) taking an oath or affirmation from a notary public but not in the capacity of a witness for the online notarization.

(8) Notary Public means an individual commissioned by the secretary of state under both Subchapters A and C, Chapter 406 of the Government Code.

(9) Traditional Notary Public means an individual commissioned by the secretary of state under Subchapter A, Chapter 406 of the Government Code. A traditional notary public does not have the authority to perform an online notarization unless also commissioned as an online notary public.

### **§87.2. Application for Commission as a Traditional Notary Public.**

(a) The secretary of state appoints notaries public under the provisions of article IV, §26 of the Texas Constitution and Chapter 406, Government Code.

(b) An individual applying for a traditional notary public commission shall use the application form prescribed by the secretary of state. The application shall include:

(1) the applicant's name to be used in acting as a traditional notary public;

(2) the applicant's mailing address;

(3) the applicant's county of residence;

(4) the applicant's date of birth;

(5) the applicant's driver's license number or the number of other official state-issued identification; and

(6) the applicant's social security number.

(c) An applicant must secure a bond if required to do so by §406.010 of the Government Code. To evidence the bond, the application shall include the signature of a person authorized by the surety company providing the bond.

(d) The applicant shall execute, in the name under which the commission is sought, the statement of officer as required by article XVI, §1 of the Texas Constitution.

(e) The application form is available on the secretary of state web site or may be obtained by writing the Office of the Secretary of State, Notary Public Unit, P.O. Box 13375, Austin, Texas 78711. See Form 2301. The application form for a notary who is an officer or employee of a state agency is Form 2301-NB, available on the web site maintained by the State Office of Risk Management.

### **§87.3. Electronic Submission of Traditional Notary Public Application.**

(a) The secretary of state has developed a system for electronic submission of the application for a traditional notary public commission, the bond required under §406.010 of the Government Code, and the statement of officer. The secretary of state authorizes the submission of these documents electronically on behalf of a traditional notary public under the following terms and conditions:

(1) the submitter must comply with the technical specifications contained in the eNotary Web Service Consumer's Guide available through the Information Technology Division of the Office of the Secretary of State;

(2) the traditional notary public application and the statement of officer signed by the

applicant and the surety bond signed by an officer or attorney-in-fact for the surety must be attached to the electronic submission as an image in the format specified in the eNotary Web Service Consumer's Guide; and

(3) all fees must be paid by prepaid account, LegalEase® or credit card.

(b) If the applicant is qualified, the secretary of state shall cause the commission to be issued and the educational materials to be sent to the traditional notary public. On commission, the applicable fees will be charged to the prepaid account, LegalEase® or the credit card.

(c) If the application is rejected, the secretary of state will return a notice of the rejection to the submitter electronically. On rejection, no fees are charged to the account, LegalEase® or to the credit card.

(d) Status of a traditional notary public application submission may be checked through use of a web service interface.

(e) If the submitter is not able to consistently comply with the technical specifications and the submissions are failing as a result, the secretary of state may revoke the privilege of the submitter to submit electronically until all technical issues are resolved to the satisfaction of the secretary of state.

(f) As part of the electronic submission, the submitter is responsible for accurately entering the data elements related to the application. Repeated and consistent entry errors may result in a revocation of the privilege of the submitter to submit electronically.

(g) The submitter shall retain the original signed application, surety bond and statement of officer until the commission is issued by the secretary of state.

(h) The secretary of state will not accept electronic applications on behalf of an applicant who has been convicted of a felony or a crime of moral turpitude. The application under these circumstances (along with the statement of officer, the bond, the explanation of the criminal conviction and the applicable fees) must be delivered to the secretary of state by mail, courier or personal delivery.

#### **§87.4. Submission of Online Notary Public Application.**

(a) An individual applying for an online notary public commission shall use the electronic submission platform developed by the secretary of state.

(b) The application shall include:

(1) the applicant's name to be used in acting as an online notary public, which shall match the name on the applicant's traditional notary public commission;

(2) the applicant's email address;

(3) the applicant's digital certificate;

(4) a copy of applicant's electronic seal in an acceptable file format;

(5) the applicant's notary public identification number, as assigned by the secretary of state;

(6) an executed statement of officer, as required by article XVI, §1 of the Texas Constitution; and

(7) a statement certifying that the applicant:

(A) will comply with the standards set forth in this chapter relating to identity proofing and credential analysis;

(B) will use a third party provider who has provided the notary with evidence of its ability to provide an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant when attaching or



logically associating the notary's electronic seal and digital certificate to an electronic document;

(C) will, upon request by the secretary of state, promptly provide any necessary instructions or techniques supplied by a vendor that allow the online notary public's digital certificate and seal to be read and authenticated; and

(D) is at least 18 years of age, a resident of the State of Texas, and has not been convicted of a felony or a crime involving moral turpitude.

## **SUBCHAPTER B. ELIGIBILITY AND QUALIFICATION**

### **§87.10. Eligibility to Hold the Office of Notary Public.**

(a) Subject to the provision in subsection (b) of this section and §87.12 of this title (relating to Qualification by an Escrow Officer Residing in an Adjacent State), a person is eligible to be a notary public if the person is 18 years of age or older and a resident of Texas.

(b) A person is not eligible to be a notary public if the person was convicted of a crime involving moral turpitude or a felony and the conviction has become final, has not been set aside, and no pardon or certificate of restoration of citizenship rights has been granted.

(c) A crime involving moral turpitude includes the commission of a crime involving dishonesty, fraud, deceit, misrepresentation, deliberate violence, moral depravity, or that reflects adversely on the applicant's honesty, trustworthiness, or fitness as a notary public, which may include, but not be limited to:

(1) Class A and B type misdemeanors which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted; and

(2) felony convictions which have not been set aside, or for which no pardon or certificate of restoration of citizenship rights have been granted.

(d) Class C type misdemeanor convictions shall not be considered in determining eligibility.

(e) If the secretary of state discovers, at any time, that an applicant or commissioned notary public is not eligible, the secretary of state will reject the notary public application or revoke the notary public commission.

### **§87.11. Eligibility to be Commissioned as an Online Notary Public.**

In addition to the eligibility requirements in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public), an applicant must hold a commission as a traditional notary public before being eligible for appointment as an online notary public.

### **§87.12. Qualification by an Escrow Officer Residing in an Adjacent State.**

(a) An applicant who is qualified as an escrow officer within the meaning assigned by §2652.051, Insurance Code, is not required to be a resident of Texas if the applicant is a resident of New Mexico, Oklahoma, Arkansas or Louisiana.

(b) The secretary of state shall commission the applicant if, notwithstanding the residency requirements, the applicant satisfies the conditions of subsection (a) of this section and §87.13 and §87.14 of this title (relating to Issuance of the Traditional Notary Public Commission by the Secretary of State and Issuance of the Online Notary Public Commission by the Secretary of State).

(c) A notary public, appointed under this section, who ceases to be qualified under this section, must voluntarily surrender the notary public commission.

**§87.13. Issuance of the Traditional Notary Public Commission by the Secretary of State.**

(a) The secretary of state shall issue a traditional notary public commission to a qualified applicant. An applicant is qualified if:

- (1) the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);
  - (2) the applicant submits:
    - (A) a properly completed and executed application;
    - (B) the bond as provided in §406.010, Government Code, if required;
    - (C) the statement of officer required by article XVI, §1 Texas Constitution;
    - (D) payment to the secretary of state of fees required by §406.007, Government Code;
- and
- (3) no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.

(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each traditional notary public who has qualified. A commission is effective as of the date of qualification.

**§87.14. Issuance of the Online Notary Public Commission by the Secretary of State.**

(a) The secretary of state shall issue an online notary public commission to a qualified applicant. An applicant is qualified if:

- (1) the applicant meets the eligibility requirements stated in §87.11 of this title (relating to Eligibility to be Commissioned as an Online Notary Public);
- (2) the applicant submits:
  - (A) a properly completed and executed application;
  - (B) the statement of officer required by article XVI, §1 Texas Constitution;
  - (C) payment to the secretary of state the application fee of \$50; and
- (3) no good cause exists for rejecting the application.

(b) The secretary of state shall not commission an applicant if the applicant had a prior application rejected or a commission revoked due to a finding of ineligibility or good cause and the reason for ineligibility or grounds for good cause continues to exist.

(c) When all conditions for qualification have been met, the application shall be approved and filed. The secretary of state shall cause a commission to be issued and sent to each online notary public who has qualified. A commission is effective as of the date of qualification and shall expire on the same date as applicant's corresponding traditional notary public commission.

**§87.15. Renewal of Commission.**

(a) A notary public seeking to renew either a traditional commission or both a traditional and online commission shall file an application for renewal in the same manner and on the same form as if filing an original application for commission. The

secretary of state will accept applications for renewal not sooner than 90 days before the expiration of the notary public's current commission. The renewal must be received by the secretary of state no later than the expiration date of the notary public's current commission.

(b) The secretary of state shall determine eligibility for renewals according to the same standards as initial applicants, in accordance with this chapter and §406.004, Government Code. The secretary of state is not bound by prior determinations of eligibility.

## **SUBCHAPTER C. NOTARIES WITHOUT BOND**

### **§87.20. Qualification by an Officer or Employee of a State Agency.**

(a) An applicant who is an officer or employee of a state agency is not required to provide a surety bond. For the purpose of this chapter, "state agency" has the meaning assigned by §2052.101, Government Code.

(b) An applicant who is an officer or employee of a state agency and does not provide a surety bond must complete the traditional notary public application entitled "Application for Appointment as a Notary Public Without Bond" (Form 2301-NB).

(c) The State Agency employing the applicant must submit the completed application to the State Office of Risk Management.

(d) The State Office of Risk Management shall complete the verification certificate on the application and forward the completed application to the Office of the Secretary of State for processing.

(e) The secretary of state shall commission the applicant if:

(1) the applicant meets the eligibility requirements stated in §87.10 of this title (relating to Eligibility to Hold the Office of Notary Public);

(2) the applicant submits:

(A) a properly completed and executed application verified by the State Office of Risk Management;

(B) the statement of officer required by article XVI, §1 Texas Constitution;

(C) the payment of fees required by §406.007(a)(2) and §406.007(b), Government Code; and

(3) no good cause exists for rejecting the application.

### **§87.21. Change in Employment Status by an Officer or Employee of a State Agency Who Has Qualified Without a Surety Bond.**

(a) If a notary public who has qualified without a surety bond transfers to another state agency, the agency to which the notary public transfers shall notify the State Office of Risk Management and the Office of the Secretary of State of the transfer.

(b) If a notary public terminates state employment, the notary public shall:

(1) voluntarily surrender the notary public commission;

(2) purchase and provide evidence to the secretary of state of the purchase of a notary public bond for the time period remaining on the notary's current term of office; or

(3) voluntarily surrender the notary public commission and apply for a new term of office, provide a notary public bond, and pay the applicable fees.

(c) Failure to take one of the actions set forth in subsection (b) of this section within 30 days of termination of state employment is good cause for revocation of the notary public's commission.

**§87.22. Special Requirements for Notaries Without Bond.**

(a) A notary public commissioned as a notary public without bond shall obtain a seal which complies with the requirements of §406.013, Government Code and §87.44 of this title (relating to Notary Seal) and which contains an additional line reading “Notary without Bond”.

(b) A state employee is not prohibited from purchasing a notary bond at personal expense. However, an individual commissioned as a notary without bond shall only notarize documents pursuant to their official state duties.

(c) Agencies shall require notaries without bond to attend a notary training class, either provided internally or externally.

(d) Notaries without bond who notarize documents outside of their official state duties or who fail to use the “Notary without Bond” seal shall be subject to disciplinary action by their respective agencies and such action may constitute good cause under §87.31 of this title (relating to Good Cause).

**SUBCHAPTER D. ADMINISTRATIVE ACTION**

**§87.30. Rejection of Application and Revocation of Commission.**

The secretary of state shall, for ineligibility or good cause, reject any application, revoke the commission of any notary public, or take other disciplinary action, as outlined in §87.34 of this title (relating to Disciplinary Action), against a notary public as the secretary of state deems appropriate. Rejection, revocation, and suspension proceedings will be held pursuant to the right of notice, hearing, and adjudication as set out in the rules of practice and procedure before the Office of the Secretary of State, the rules of the State Office of Administrative Hearings and the Administrative Procedure Act, Government Code, §§2001.001 - 2001.902. Any party to a contested case has the right to be represented by legal counsel. Such action will be subject to the right of appeal to a district court of Travis County.

**§87.31. Good Cause.**

Good cause may include the following:

- (1) a false statement knowingly made in a notary public application;
- (2) a final conviction for the violation of any law concerning the regulation of the conduct of notaries public in this state or any other state;
- (3) use of the phrase “notario” or “notario publico” in connection with advertising or offering the services of a notary public;
- (4) false representation as an attorney as specified in §406.017, Government Code;
- (5) a failure to fully and faithfully discharge any of the duties or responsibilities required of a notary public;
- (6) the unauthorized practice of law;
- (7) a failure to utilize a correct notary seal as described in §406.013 and §406.101(5), Government Code and this chapter;
- (8) a failure to administer an oath or affirmation as required by law;
- (9) the collection of a fee in excess of the fees authorized by §406.024 and §406.111, Government Code;
- (10) the execution of any certificate as a notary public containing a statement known to the notary public to be false;

- (11) a failure to complete the notarial certificate at the time the notary public's signature and seal are affixed to the document;
- (12) the advertising or holding out in any manner that the notary public is an immigration specialist, immigration consultant, or any other title or description reflecting an expertise in immigration matters;
- (13) the use of false or misleading advertising of either an oral or written nature, whereby the notary public has represented or indicated that he or she has duties, rights, powers, or privileges that are not possessed by law;
- (14) performing a notarization when the purported principal did not personally appear before the notary public at the time the notarization is executed;
- (15) previous disciplinary action against the notary public in accordance with these sections;
- (16) a failure to comply with, or violation of, a previous disciplinary action taken pursuant to §87.34 of this title (relating to Disciplinary Action);
- (17) a failure to promptly respond to a request for public information in accordance with §87.52 of this title (relating to Public Information);
- (18) a failure to properly identify the individual whose signature is being notarized;
- (19) a failure to keep a notary record as described in §406.014 and §406.108, Government Code, and Chapter 87 of this title;
- (20) a failure to include in the notarial certificate for an online notarization a notation that the notarization is an online notarization;
- (21) a failure to take reasonable steps to ensure that the two-way audio-visual communication used during an online notarization is secure from unauthorized interception;
- (22) a failure to safely and securely maintain notary materials;
- (23) performing a notarial act that the notary public is not authorized to perform;
- (24) use of a digital certificate or electronic seal that has expired or is no longer valid;
- (25) a failure to report a new digital certificate or electronic seal as required by §87.63 of this title (relating to Changes to Digital Certificate and Electronic Seal for Online Notary);
- (26) notarizing one's own signature;
- (27) a failure to pay the filing fee required by §406.007, Government Code, and §87.13 and §87.14 of this title (relating to Issuance of the Traditional Notary Public Commission by the Secretary of State and Issuance of the Online Notary Public Commission by the Secretary of State) or when such payment was made by an instrument that was dishonored when presented by the state for payment;
- (28) a failure to timely respond to a request for information from the secretary of state; and
- (29) a failure to maintain a current address as required by §406.019, Government Code.

### **§87.32. Submitting a Complaint.**

(a) The jurisdiction of the secretary of state to investigate a complaint is limited to individuals who are commissioned or have applied for commission or renewal of a commission as a Texas notary public. The jurisdiction of the secretary of state to investigate a complaint ceases upon the expiration, revocation or surrender of a notary public commission, except as provided in §87.35 of this title (relating to Time for Action).

(b) A person harmed by the actions of a notary public may file a complaint with the secretary of state on a form prescribed by the secretary of state. The complaint shall include:

- (1) the name of the notary public who is the subject of the complaint;
  - (2) the expiration date of the notary public's current commission;
  - (3) the name, mailing address, and email address of the individual filing the complaint;
  - (4) whether the notary was performing an online notarization;
  - (5) a recitation of the facts, within the personal knowledge of the complainant, relating to the alleged misconduct by the notary public; and
  - (6) copies of the notarized documents that are the subject of the complaint.
- (c) The complaint shall be signed and verified by the person alleging misconduct on the part of the notary public.
- (d) The secretary of state may, for good cause, as defined in §87.31 of this title (relating to Good Cause), and/or as otherwise referenced in this title, initiate its own complaint against a notary public.

### **§87.33. Complaint Procedures.**

(a) The secretary of state may determine that the allegations in the complaint are not sufficient to warrant formal disciplinary action. In such case, the secretary of state may:

- (1) take no action on the complaint;
- (2) informally advise the notary public of the appropriate conduct and the applicable statutes and rules governing the conduct; or
- (3) request further information from the complainant or the notary public prior to taking action.

(b) If the secretary of state determines that the complaint alleges sufficient facts to constitute good cause for disciplinary action against the notary public, and the complaint complies with §87.32 of this title (relating to Submitting a Complaint), the secretary of state shall send a copy of the complaint, with any attachments the secretary of state deems to be relevant, to the notary public with a request to the notary to respond to the statements in the complaint.

(c) The notary public must respond to the complaint in writing. The response must:

- (1) specify any disputed facts and provide such additional information as the notary public shall desire;
- (2) be signed and sworn to by the notary public before a person authorized to administer oaths;
- (3) include copies of the pages of the notary record book referencing the notarization that is the subject of the complaint; and
- (4) be received by the secretary of state within 21 days of the date of the secretary of state's notice of the complaint to the notary public.

(d) The secretary of state shall review the response and determine whether further administrative action is appropriate. If the secretary determines that no further action is appropriate, the secretary shall notify the notary public and the complainant of the determination in writing.

(e) If the secretary determines that further administrative action is appropriate, the secretary shall follow the procedures set forth in this §87.34 of this title (relating to Disciplinary Action).

**§87.34. Disciplinary Action.**

(a) The secretary of state has discretion to determine that the conduct that forms the basis of a complaint against a notary public does not warrant disciplinary action against the notary public and take no further action on the complaint. If the secretary of state determines that disciplinary action should be taken, the secretary of state may pursue the following disciplinary actions against individuals commissioned pursuant to Subchapter A or C, Chapter 406, Government Code:

- (1) issue a written reprimand to the notary public; or
- (2) require the notary public to enter into an agreement to:
  - (A) not engage in any further misconduct;
  - (B) agree to voluntarily surrender the notary public commission;
  - (C) accept a suspension of the notary public commission for a set period of time;
  - (D) complete a course of study relating to the powers, duties, and responsibilities of a notary public;
  - (E) not seek renewal of the notary public commission for a specified period of time;

or

- (F) take such other action as the secretary deems appropriate; or
- (3) take action to revoke the notary public commission.

(b) If an individual has been commissioned as a notary public under both Subchapters A and C of Chapter 406, Government Code, the office has the discretion to pursue revocation of either the online notary public commission alone or both the traditional and online notary public commission.

(c) If no agreement can be reached, before taking action to suspend or revoke the notary public commission, the secretary of state shall give written notice to the notary of a right to a hearing in accordance with the rules of practice and procedure before the secretary of state. If a hearing is timely requested, the secretary of state shall follow the provisions of the Administrative Procedure Act, Chapter 2001, Texas Government Code governing the initiation and conduct of a contested case proceeding.

(d) It is within the secretary of state’s discretion to determine that no action should be taken or to enter into an agreement with the notary public regarding the appropriate action. The secretary of state shall close a complaint file upon a determination that no further action is necessary or conclusion of an agreement with the notary public. After a complaint file is closed, the secretary of state will take no further action on the complaint and will not accept an additional complaint with the same or substantially similar allegations.

**§87.35. Time for Action.**

The secretary of state may take disciplinary action for an act or omission which occurred during a prior term of office. The secretary may also require any pending complaints against a notary public that remain at the expiration of the notary public’s prior commission to be resolved prior to accepting a renewal or new application for appointment as a notary public. Failure to reach a resolution on an unresolved complaint may result in the rejection of an application for appointment or renewal.

**SUBCHAPTER E. NOTARY PROCEDURES**

**§87.40. Traditional Notarization Procedures.**

(a) A traditional notary public shall not perform a notarization if the principal does not personally appear before the notary at the time of notarization in accordance with §87.1 of this title (relating to Definitions).

(b) The methods by which a traditional notary public identifies a principal are as follows:

(1) Traditional notary public personally knows the principal; or

(2) Principal is introduced by oath of credible witness who personally knows the principal and either is personally known to the traditional notary public or provides qualifying identification in accordance with paragraph (3) of this subsection; or

(3) Identification by a credential.

(c) For all notarial acts that require a notarial certificate, the traditional notary public shall attach a notarial certificate that names the principal, the date of the notarization, the state and county in which the notarization is performed, and language evidencing the type of notarial act performed. The notarial certificate shall be signed and include an impression of the notary's seal.

(d) The traditional notary public shall keep a record of all notarial acts in accordance with §406.014, Government Code, and this chapter.

(e) This section shall apply to a traditional notary public who performs notarizations on tangible or electronic records.

#### **§87.41. Online Notarization Procedures.**

(a) An online notarization may only be performed by a notary who is commissioned as an online notary public.

(b) An online notary public shall not perform an online notarization if the online notary public is not physically in Texas at the time of the notarization.

(c) An online notary public shall not perform an online notarization if the principal does not personally appear before the notary public at the time of notarization in accordance with §87.1 of this title (relating to Definitions).

(d) The methods by which an online notary public identifies a principal are as follows:

(1) Online notary public personally knows the principal; or

(2) Principal is introduced by oath of credible witness who personally knows the principal and either is personally known to the online notary public or provides qualifying identification in accordance with paragraph (3) of this subsection; or

(3) Principal or credible witness is identified using the identity proofing and credential analysis standards in accordance with subchapter H of this chapter.

(e) For all notarial acts that require a notarial certificate, the online notary public shall attach an electronic notarial certificate that identifies the principal, the date of the notarization, the state and county in which the notarization was performed, that the notarial act was an online notarization, and language evidencing the type of the notarial act performed. The notarial certificate shall be signed by affixing the online notary public's digital certificate and include an attachment of the online notary public's electronic seal.

(f) The liability, sanctions, and remedies for the improper performance of online notarial acts are the same as described and provided by law for the improper performance of traditional notarial acts.

(g) An online notary public shall keep a record of all notarial acts in accordance with §406.108, Government Code, and Chapter 87 of this title. The record shall include a



recording of the audio-visual conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence by the principal, if the principal is not personally known to the online notary public. The recording shall include, at minimum:

(1) confirmation by the notary public that the principal has successfully completed identity proofing and credential analysis;

(2) visual confirmation of the identity of the principal through visual inspection of the credential used during credential analysis; and

(3) the actual notarial act performed.

(h) If the principal is personally known to the online notary public, the audio-visual conference shall include a statement to that effect and a recording of the actual notarial act performed.

(i) The online notary public shall not disclose any access information used to affix the notary's digital certificate and seal except when requested by the secretary of state, law enforcement, the courts, and with reasonable precautions, electronic document preparation and transmission vendors.

(j) Online notaries public shall attach their digital certificate and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

#### **§87.42. Refusal of Requests for Notarial Services.**

(a) A notary public is authorized to refuse to perform a notarial act if:

(1) the notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence;

(2) the notary public has reasonable grounds to believe that the document in connection with which the notarial act is requested may be used for an unlawful or improper purpose;

(3) the notary public has reasonable grounds to believe the signing party does not have the capacity to understand the contents of the document; or

(4) the notary public is not familiar with the type of notarization requested.

(b) A notary public who is employed by a governmental body shall not perform notarial services that interfere with the notary's discharge of the notary's duties as a public employee.

(c) An employer may limit or prohibit an employee who is a notary public from notarizing during work hours.

(d) A notary public may not refuse a request for notarial services on the basis of the sex, age, religion, race, ethnicity or national origin of the requesting party.

(e) A notary public should refuse a request for notarial services only after careful deliberation.

#### **§87.43. Reasons to Refuse Online Notarization.**

In addition to those in §87.42 of this title (relating to Refusal of Requests for Notarial Services) in which a notary public is authorized to refuse a notarization, an online notary shall refuse to perform an online notarization if:

(1) The online notary public is unable to verify the identity of the principal using an acceptable means of identification in accordance with Subchapter H;

(2) The online notary public is unable to verify the security of the two way audio visual transmission;

(3) The signature of the principal cannot be attached to the electronic document; or

(4) The digital certificate or electronic seal of the online notary public cannot be attached to the electronic document in a manner that renders any subsequent change or modification to the document evident.

**§87.44. Notary Seal.**

(a) The name on the notary public seal must match the name, as stated on the application, under which the notary public is commissioned and performs all notarial acts.

(b) For all applicants commissioned or recommissioned on or after January 1, 2016, the notary public seal must contain the identifying number issued by the secretary of state.

(c) For notaries public who were commissioned or recommissioned prior to January 1, 2016, the seal of such notaries is not required to contain the identifying number issued by the secretary of state until the notary is recommissioned in accordance with the procedures specified in §406.011, Texas Government Code, and §87.15 of this title (relating to Renewal of Commission). The seal of notaries who were commissioned or recommissioned prior to January 1, 2016, may, however, contain the identifying number issued by the secretary of state prior to the notary being recommissioned in accordance with the procedures specified in §406.011, Texas Government Code, and §87.15 of this title.

(d) The notary seal shall remain within the exclusive control of the notary public at all times.

**SUBCHAPTER F. NOTARY RECORDS**

**§87.50. Prohibition Against Entering Personal Information in a Notary Record Book.**

(a) A notary public (other than a court clerk notarizing instruments for the court) shall not record in the notary's record book:

(1) an identification number that was assigned by a governmental agency or by the United States to the principal and that is set forth on the identification card or passport presented as identification;

(2) any other number that could be used to identify the principal of the document; or

(3) a biometric identifier, including a fingerprint, voice print, and retina or iris image.

(b) This section does not prohibit a notary public from recording a number related to the mailing address of the principal of the document or the instrument.

(c) This section does not apply to the audio-visual recording required by an online notary public performing an online notarization.

(d) A notary public who inadvertently records information prohibited under subsection (a) of this section shall redact such information prior to providing public access to or copies of the notary record book.

**§87.51. Form of Record Book.**

(a) Notary records, other than records of online notarizations, may be maintained either in a book or electronically in a computer or other storage device so long as the records are adequately backed-up and are capable of being printed in a tangible medium when requested.

(b) Records of an online notarization shall be maintained electronically in computers

or other storage devices that are capable of recording the information required by §406.108, Government Code, including a recording of any video and audio conference that is the basis for identifying the principal. An online notary public may contract with a third party to provide such storage if the third party:

(1) has provided reasonable evidence to the online notary public that it is capable of providing such services; and

(2) provides complete access to the online notary public of all the notary's records for an agreed period of time, which at minimum, complies with the retention requirements in §87.54 of this title (relating to Records Retention) even if such a contract is terminated. If the contract between the online notary public and the third party is terminated, all records must be transferred to the online notary public.

(c) The records of a notary public shall remain within the exclusive control of the notary public at all times.

(d) A notary public who performs multiple notarizations for the same principal within a single document may abbreviate the entry of those notarizations in the notary record book, except that a separate entry must be made for each type of notarial act. The abbreviated entry must contain all the information required by §406.014, Government Code, and must include the number of notarizations performed within the specified document.

#### **§87.52. Public Information.**

(a) Subject to subsection (b) of this section, records regarding notarial acts performed are public information. On payment of all fees, the notary public shall promptly provide a certified copy of any entries in the notary public's records to any person requesting the copy. The notary shall provide the certified copy no later than 10 business days from the date of receipt of the fees, unless the notary cannot produce the certified copy within 10 business days from the date of receipt of the fees, in which case the notary shall certify that fact in writing to the person requesting the copy on or before the 10th business day from the date of receipt of the fees, and set a date and hour within a reasonable time when the certified copy will be provided, and shall provide the information by that date and hour. If the notary has inadvertently included personal identifiable information in the record contrary to §87.50 of this title (relating to Prohibition Against Recording Personal Information), the notary must redact that personal information prior to release of the information.

(b) If any portion of the audio visual recording of an online notarization includes biometric information or includes an image of the identification card used to identify the principal, that portion of the recording is confidential and shall not be released without consent of the individual(s) whose identity is being established, unless ordered by a court of competent jurisdiction or upon request by the secretary of state.

#### **§87.53. Failure to Provide Public Information.**

Failure of a notary public to promptly and adequately respond to a request for public information in accordance with §87.52 of this title (relating to Public Information) may be good cause for suspension or revocation of a notary commission or other disciplinary action against the notary.

#### **§87.54. Records Retention.**

(a) Records of a notarization other than an online notarization shall be retained, in a

safe and secure manner, for the longer of the term of the commission in which the notarization occurred or three years following the date of notarization.

(b) Records of an online notarization shall be retained, in a safe and secure manner, for five years following the date of the notarization. An online notary public must also maintain a back-up of the electronic records for the same period of time. Both the original records and the back-up shall be protected from unauthorized use.

## **SUBCHAPTER G. CHANGES AFTER COMMISSIONING**

### **§87.60. Change of Address.**

(a) A notary public must notify the secretary of state in writing of a change in address within 10 days of the change. To notify the secretary of state of a change of address, the notary public should complete and submit Form 2302 (Notary Public Change of Address Form). This form is available on the secretary of state web site.

(b) The secretary of state sends all official notices, including notices of complaints and requests to respond to complaints, to the notary public at the address on file with the secretary's office. Failure to change the address may, consequently, result in a revocation of the notary commission if, for example, the notary fails to timely respond to a complaint or to a request for public information.

(c) A notary public who removes his or her residence from Texas or no longer qualifies under the residency exceptions provided under §87.12 of this title (relating to Qualification by an Escrow Officer Residing in an Adjacent State) vacates the office of notary public and must surrender the notary commission to the secretary of state.

### **§87.61. Qualification Under New Name.**

(a) During the four-year term of office, a notary public may change the name on the notary commission by submitting the following to the secretary of state:

(1) an Application for Change of Name as a Texas Notary Public (Form 2305 available on the secretary of state web site);

(2) for traditional notaries public, a rider or endorsement to the bond on file with the secretary of state from the surety company or its agent or representative specifying the change of name;

(3) the current certificate of commission or a signed and notarized statement that the notary public will perform all future notarial acts under the name specified on the amended commission; and

(4) the statutory fee equal to the sum of the fee for the issuance of a commission and the fee for filing of a bond.

(b) An online notary public shall check the appropriate box on Form 2305 to update the name on both the traditional and online notary commission and shall pay the fee for issuance of two commissions and the bond.

### **§87.62. Issuance of Amended Commission.**

(a) If the submission of the change of name complies with §87.61 of this title (relating to Qualification Under New Name), the secretary of state shall issue an amended commission to the notary public in the name requested. Upon issuance of the amended commission, the notary public must perform all notarial acts using the name on the amended commission.

(b) Upon qualifying under a new name, a notary public must obtain a new seal that contains the name, as specified on the amended commission, under which the notary will perform all future notarial acts.

(c) If the notary public who qualifies under a new name is commissioned as both a traditional and online notary, the notary shall obtain both a new traditional seal and new electronic seal and digital certificate that contains the name, as specified on the amended commission, under which the notary will perform all future notarial acts.

### **§87.63. Changes to Digital Certificate and Electronic Seal for Online Notary.**

(a) An online notary public shall at all times maintain an electronic seal and a digital certificate that includes the online notary's electronic signature. Both the electronic seal and digital certificate must comply with the provisions of Chapter 406, Government Code, and this chapter.

(b) An online notary public shall replace an electronic seal or digital certificate under the following circumstances:

(1) the electronic seal or digital certificate has expired;

(2) the electronic seal or digital certificate has been revoked or terminated by the device's issuing or registering authority; or

(3) the electronic seal or digital certificate is for any reason no longer valid or capable of authentication.

(c) An online notary public who replaces an electronic seal or digital certificate shall provide the following to the secretary of state within 10 days of the replacement:

(1) the electronic technology or technologies to be used in attaching or logically associating the new electronic seal or digital certificate to an electronic document;

(2) applicant's new digital certificate, if applicable;

(3) a copy of applicant's new electronic seal, if applicable; and

(4) any necessary instructions or techniques supplied by the vendor that allow the notary's electronic seal or digital certificate to be read and authenticated.

## **SUBCHAPTER H. MINIMUM REQUIREMENTS FOR ONLINE NOTARIZATIONS**

### **§87.70. Identity Proofing and Credential Analysis Standards.**

(a) Identity proofing and credential analysis must be performed by a reputable third party who has provided evidence to the online notary public of the ability to satisfy the requirements of this chapter.

(b) Identity proofing is performed through dynamic knowledge based authentication which meets the following requirements:

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

(2) each question must have a minimum of five possible answer choices;

(3) at least 80% of the questions must be answered correctly;

(4) all questions must be answered within two minutes;

(5) if the principal fails their first attempt, they may retake the quiz one time within 24 hours;

(6) during the retake, a minimum of 60% of the prior questions must be replaced; and

(7) if the principal fails their second attempt, they are not permitted to retry with the same online notary public for 24 hours.

(c) Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal.

(d) Credential analysis shall, at a minimum:

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

(2) ensure that the credential passes an authenticity test, consistent with sound commercial practices that:

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

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

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

(D) Provide output of the authenticity test to the notary public.

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

(e) If the principal must exit the workflow, the principal must meet the criteria outlined in this section and must restart the identity proofing and credential analysis from the beginning.

#### **§87.71. Online notarization system.**

An online system used to perform online notarial acts by means of audio-video communication shall:

(1) provide for continuous, synchronous audio-visual feeds;

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

(3) provide sufficient captured image resolution for credential analysis to be performed in accordance with subchapter H of this chapter.

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

(5) provide some manner of ensuring that the electronic record that is presented for online notarization is the same record electronically signed by the principal;

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

(7) provide reasonable security measures to prevent unauthorized access to:

(A) the live transmission of the audio-video communication;

(B) a recording of the audio-video communication;

(C) the verification methods and credentials used to verify the identity of the principal; and

(D) the electronic documents presented for electronic notarization.