

**TENNESSEE CODE ANNOTATED**

**TITLE 8. PUBLIC OFFICERS AND EMPLOYEES  
CHAPTER 16. NOTARIES PUBLIC  
PART 1 QUALIFICATIONS**

**8-16-101. Election - Residency requirement - Eligibility.**

(a) There shall be elected by the members of the county legislative body as many notaries public as they may deem necessary. In addition to any other requirement imposed by law, a person must be a United States citizen or a legal permanent resident in order to hold the office of notary public. At the time of their election, all notaries must be residents of the county, or have their principal place of business in the county, from which they were elected. If an individual's principal place of business is in any county in the state of Tennessee, the individual is eligible for election as a notary in that county, although the individual may reside in a state other than Tennessee.

(b) Nothing contained within the provisions of § 5-5-102(c)(2), or any other law, shall be construed to prohibit a member of a county legislative body from also serving as a notary public; provided, that such member complies with the requirements established within this part.

(c) In addition to any other eligibility requirements, each person applying for election as a notary public shall certify under penalty of perjury that such person:

(1) Has never been removed from the office of notary public for official misconduct;

(2) Has never had a notarial commission revoked or suspended by this or any other state; and

(3) Has never been found by a court of this state or any other state to have engaged in the unauthorized practice of law.

**8-16-102. Commission.**

All notaries shall be approved by the governor. For purposes of this section, "approved" means to accept or to sanction, and does not mean to appoint.

**8-16-103. Term of office.**

The term of office of notaries public shall be four (4) years, such term to begin on the date of the issuance of their commissions by the governor.

**8-16-104. Surety bond.**

(a) Every notary public, before entering upon the duties of office, shall give bond executed by some surety company authorized to do business in Tennessee as surety, or with two (2) or more good sureties, approved by the county legislative body, in the penalty of ten thousand dollars (\$10,000), payable to the state of Tennessee, conditioned for the faithful discharge of the notary's duties. The bond shall be filed in the office of the county clerk in the county where elected.

(b) [Deleted by 2004 amendment.]

**8-16-105. Oath of office.**

A notary public shall also take and subscribe, before the county clerk or the clerk's

deputy within the notary public's county, an oath to support the constitutions of this state and of the United States, and an oath that the notary will, without favor or partiality, honestly, faithfully, and diligently discharge the duties of notary public.

**8-16-106. Payment of fee - Issuance of commission.**

It is the duty of any person elected a notary public, who desires to qualify for such office, to pay to the county clerk of the county in which the notary resides or has principal place of business and was elected, the fee required to be paid into the office of the secretary of state for the issuance of a commission to a notary public. Thereupon, it is the duty of the county clerk to certify the notary's election to the secretary of state and forward to the latter the fee. It is the duty of the secretary of state, upon receipt of the certificate and fee, to forward such commission to the county clerk, when the same has been issued by the governor, and the county clerk shall promptly notify the person to whom such commission is issued that the same has been received in the clerk's office. The county clerk shall be entitled to a fee of seven dollars (\$7.00), due with payment of the fee to the secretary of state, for the services performed according to this section.

**8-16-107. Delivery of commission - Clerk's record.**

The county clerk shall not deliver the commission until the person elected has taken the oath and executed the bond, as required. The county clerk shall make a record of the date of the issuance and the expiration of the commission, noting the same on the bond executed by the notary public and also in the minute entry showing the notary's qualification as such notary public.

**8-16-108. [Repealed.]**

**8-16-109. Relocation of notary's residence or principal place of business to another county.**

If a notary public's surname changes, or if a notary public moves such notary's residence or principal place of business out of the county from which the notary was elected and commissioned to another county in Tennessee, the notary shall notify the county clerk of the county from which the notary was elected and commissioned and shall pay to such county clerk a fee of seven dollars (\$7.00). The county clerk shall thereupon notify the secretary of state of the change of address or name change and forward to the secretary of state two dollars (\$2.00) of the seven dollar (\$7.00) fee received from the notary. [Acts 1935, ch. 193, § 1; mod. C. Supp. 1950, §

**8-16-110. Relocation of notary's residence or principal place of business to another state - Surrender of commission.**

If a notary public moves such notary's residence or principal place of business out of the state of Tennessee, such notary is no longer qualified to act as a Tennessee notary public and shall surrender such notary's commission. It is an offense for any person who has been commissioned as a Tennessee notary public to take acknowledgements or otherwise act in an official capacity after moving out of the state of Tennessee. A violation of this section is a Class C misdemeanor.

**8-16-111. [Repealed.]**

**8-16-112. Scope of authority - Powers.**

A Tennessee notary public is authorized to act in any county in the state and has the power to acknowledge signatures upon personal knowledge or satisfactory proof, to administer oaths, to take depositions, to qualify parties to bills in chancery, and to take affidavits, in all cases. Furthermore, in all such cases the notary public's seal shall be affixed and the notary public shall sign such documents in ink by the notary's own hand unless otherwise provided by law.

**8-16-113. Title of notary public for the state of Tennessee.**

Any notary public fulfilling the requirements of this part shall be known as a notary public for the state of Tennessee, and the official signature of such notary public shall so indicate.

**8-16-114. Seal of notary public for the state of Tennessee - Imprinting of seal - Fee.**

(a) The secretary of state shall prescribe and design an official seal to be used by a Tennessee notary public. The seal of office may be imprinted by a rubber or other type of stamp. Such stamp shall imprint the seal of office in any color other than black or yellow, provided the color used to imprint the seal shall be clearly legible and appear as black when photocopied on a non-color copier. Nothing in this subsection (a) shall be construed to require a notary public to procure such a rubber or other stamp or to use a particular color of ink with the stamp prior to the expiration of the notary's term of office, and all impression notary seals shall be valid for use until the end of the notary's term of office. Notwithstanding any other provision of law or provision of this subsection (a) to the contrary, the use of an embossed notary seal after May 12, 2003, shall not render such an acknowledgement defective. No person shall incur any civil or criminal liability for failure to imprint the seal of office in a color required by this subsection (a) nor shall any document or title imprinted with a seal of the wrong color be invalid because of such failure.

(b) Every notary public shall, at such notary's own expense, procure a seal of office, which the notary shall surrender to the county legislative body when the notary resigns, or at the expiration of such notary public's term of office, and which such notary's representatives, in case of such notary's death, shall likewise surrender, to be cancelled.

(c) At the notary public's request, the county clerk may obtain an official seal or any part thereof for the notary public. Any county clerk providing this service may charge a fee not to exceed twenty percent (20%) of the cost of the seal or part obtained for the notary public.

**8-16-115. Expiration of commission indicated on instruments.**

Every certificate of acknowledgement officially executed by a Tennessee notary public shall include the true date of the notary's commission expiration. Failure to include the commission expiration date shall not render void or invalidate such certificate of acknowledgement.

**8-16-116. Receipt of instruments in evidence.**

The attestations, protestations, and other instruments of publication or acknowledgment, made by any notary public under seal, shall be received in evidence.

**8-16-117. Notice of deposition of notary public.**

The deposition of a notary public may be taken, whether a suit be pending or not, on ten (10) days' notice to the opposite party, if resident in the state, and forty (40) days' notice out of the state, to be read as evidence between the same parties in any suit then or afterward depending, should the notary die or leave the state before the trial.

**8-16-118. [Repealed.]**

**8-16-119. [Repealed.]**

**8-16-120. Acting after expiration of commission.**

It is unlawful for any person who has been commissioned as a notary public, either as a result of election or upon direct appointment by the governor, to take acknowledgments or otherwise act in an official capacity after the expiration of such notary's commission. A violation of this section is a Class C misdemeanor.

**8-16-121. Depositions taken by notaries public of other states.**

A notary public, duly and lawfully commissioned by the proper authorities of another state and empowered by the law of such state to take depositions, is authorized to take depositions to be used in the courts of this state, upon the same terms that are provided for the taking of depositions by other officials in such states. But the certificate of such notary shall show the date of the commencement and expiration of the commission under which the notary may be acting.

**PART 2. NOTARIES AT LARGE  
[REPEALED OR TRANSFERRED.]**

**8-16-201. [Repealed.]**

**8-16-202. [Transferred.]**

**8-16-203. [Repealed.]**

**8-16-204. [Repealed.]**

**8-16-205. [Transferred.]**

**8-16-206. [Transferred.]**

**8-16-207. [Repealed.]**

**8-16-208. [Repealed.]**

**PART 3. ONLINE NOTARY PUBLIC ACT**

**8-16-301. Short title.**

This part shall be known and may be cited as the "Online Notary Public Act."

**8-16-302. Part definitions.**

As used in this part:

(1) "Appear" or "appearance" or "personally appear" means:

(A) Appearing physically before a notary public; or

(B) Appearing before an online notary public by means of an interactive two-way

audio and video communication that meets the online notarization requirements under rules promulgated by the secretary of state;

(2) “Credential analysis” means a process or service operating as outlined in rules promulgated 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;

(3) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(4) “Electronic document” means information that is created, generated, sent, communicated, received, or stored by electronic means;

(5) “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 information required by the secretary of state in rule 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;

(6) “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;

(7) “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;

(8) “Identity proofing” means a process or service operating according to criteria as outlined in rules promulgated by the secretary of state, through which a third person affirms the identity of an individual through review of personal information in public and proprietary data sources;

(9) “Notarial act” means the performance by an online notary public of a function authorized under § 8-16-112;

(10) “Online notarization” means a notarial act performed by means of two-way video and audio conference technology that meets the standards adopted under § 8-16-305;

(11) “Online notary public” means a notary public who is a commissioned notary public and has been additionally commissioned to perform online notarizations as outlined in this part;

(12) “Principal” means an individual:

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

(B) Who appears before and provides an acknowledgement of or takes an oath or affirmation from the online notary public but not in the capacity of a witness for the online notarization; and

(13) “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.

**8-16-303. Applicability of part.**

This part only applies to online notarizations.

**8-16-304. Rulemaking.**

The secretary of state shall promulgate rules necessary to implement this part, including rules to facilitate online notarizations. Rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**8-16-305. Standards for online notarization.**

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

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

**8-16-306. Application; qualifications.**

(a) A person who has been commissioned as a notary public may apply to the secretary of state to be commissioned as an online notary public in the manner provided by this section.

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

(1) Satisfying the qualification requirements for appointment as a notary public under part 1 of this chapter; and

(2) 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 legal name as listed in the records of the county where the applicant is commissioned as a notary;

(2) The applicant's physical address in this state, which includes the street address, city, state, and zip code. However, the applicant may provide a post office box number for purposes of receiving mail from the secretary of state;

(3) A valid email address for the applicant;

(4) A valid telephone number of the applicant;

(5) The county in this state where the notary was commissioned as well as the date the notary was commissioned and the date the notary commission expires;

(6) Any other information deemed necessary by the secretary of state for the purpose of determining whether the applicant qualifies to become an online notary; and

(7) A certification that the applicant will comply with the secretary of state's standards promulgated pursuant to § 8-16-305.

(d) The secretary of state may charge a fee for an application submitted under this section not to exceed an amount necessary to administer this part.

**8-16-307. Performance of notarial acts.**

An online notary public:

(1) Is a notary public for purposes of this chapter, is subject to this chapter, and must be appointed and commissioned as a notary public under this chapter;

(2) May perform notarial acts as provided in part 1 of this chapter; and

(3) May perform an online notarization, without regard to the physical location of the principal, if the notary is physically located in this state.

**8-16-308. 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 record may be kept in one (1) or more electronic journals. 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, if applicable; or

(D) (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) must be maintained for at least five (5) years after the date of the transaction or proceeding requiring notarization. The notary, or a guardian or personal representative of an incapacitated or deceased notary, may by agreement use a repository acting in accordance with any rules established under this chapter to maintain such records.

**8-16-309. 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, which includes access protection through the use of passwords or codes under control of the notary public. No online notary public shall allow another person to use the online notary public's electronic record, electronic signature, or electronic seal.

(c) An online notary public may only use the online notary public's electronic

signature for performing online notarizations.

(d) An online notary public shall attach the online notary public's electronic signature and electronic 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.

#### **8-16-310. Online notarization procedures.**

(a) 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 part and rules promulgated pursuant to this part. Identity may be verified by:

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

(2) (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;

(A) Credential analysis of the credential described in subdivision (a)(2)(A); and

(B) Identity proofing of the person described in subdivision (a)(2)(A).

(b) 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.

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

(d) The validity of an online notarization performed by an online notary public of this state in accordance with this chapter shall be determined by applying the laws of this state.

#### **8-16-311. 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 twenty-five dollars (\$25.00) each for performing an online notarization in addition to any other fees authorized under this chapter.

#### **8-16-312. Termination of online notary public's commission.**

(a) The secretary of state shall terminate the commission of an online notary public if the online notary fails to comply with this chapter.

(b) Except as provided in subsection (c), 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 (b) to the secretary of state as provided in rule.

(c) 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 in



subsection (b) if the former online notary public is recommissioned as an online notary public with the same electronic signature and seal within three (3) months after the former commission terminated.

**8-16-313. Wrongful possession of software or hardware; criminal offense.**

(a) It is an offense for 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 electronic seal.

(b) A violation of this section is a Class D felony.

**PART 4. CONSUMER PROTECTION**

**8-16-401. Notice that notary public is not an attorney.**

A notary public who is not an attorney licensed to practice law in this state who advertises in any language the person's services as a notary public by radio, television, signs, pamphlets, newspapers, telephone directory or other written or oral communication, or in any other matter, shall include with such advertisement the notice set forth in this section in English and in the language used in the advertisement. The notice shall be of conspicuous size and shall state:

“I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN THE STATE OF TENNESSEE, AND I MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.”

An advertisement on radio or television must include substantially the same message.

**8-16-402. Prohibited representations or advertising.**

A notary public who is not an attorney licensed to practice law is prohibited from representing or advertising that the notary public is an immigration consultant, immigration paralegal or expert on immigration matters unless the notary public is an accredited representative of an organization recognized by the board of immigration appeals pursuant to 8 CFR § 292.2(a-e) or any subsequent federal law.

**8-16-403. Compliance.**

Any failure to comply with the foregoing provisions constitutes an unfair or deceptive act as provided for in § 47-18-104.

**8-16-404. Exceptions.**

The provisions of this part shall not apply to:

(1) Notary services offered by a state or national bank, trust company, savings and loan association, savings bank or by any affiliate or subsidiary of such state or national bank, trust company, savings and loan association or savings bank or any agent or employee thereof; or

(2) Any offering of notary services or listing of fees for notary services as a part of the closing of any loan transaction, extension of credit, security instrument or transfer of title.

## CHAPTER 21. FEES CHARGED

### 8-21-1201. Notaries public.

(a) A notary public or the notary's employer is entitled to demand and receive reasonable fees and compensation for the notary's services.

(b) If the notary or the notary's employer demands and receives a fee, the notary shall keep a record, either in an appropriate electronic form or in a well-bound book, of each of the notary's acts, attestations, protestations, and other instruments of publication.

(c)(1) If the notary or the notary's employer does not demand or receive a fee for the notary's services, no recordation of the notary's acts, attestations, protestations, and other instruments of publication is required.

(2) If the notary or the notary's employer demands and receives a fee for one (1) or more services but does not separately charge a fee for the notary services, then no recordation of the notary's acts, attestations, protestations, and other instruments of publication is required.

(d)(1) If the notary is an employee of a financial institution subject to the Financial Records Privacy Act, compiled in title 45, chapter 10, and the notary or employer of the notary charges a fee, and the services performed by the notary are part of the notary's duties and within the scope of the notary's employment, then access to the record shall be governed by the Financial Records Privacy Act, or the federal Right to Financial Privacy Act of 1978 (12 U.S.C. § 3401 et seq.), whichever is applicable.

(2) If the notary is an employee of a financial institution and the notary does not charge a fee for the services, the records kept by the notary, if any, shall be considered records of the notary unless the financial institution adopts a written policy stating that such records are a record of the financial institution. In such case, access to the record shall be governed by the Financial Records Privacy Act or the federal Right to Financial Privacy Act of 1978, whichever is applicable.

## TITLE 47. COMMERCIAL INSTRUMENTS AND TRANSACTIONS CHAPTER 10. UNIFORM ELECTRONIC TRANSACTIONS

### 47-10-111. 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.

## TITLE 66. PROPERTY CHAPTER 22. ACKNOWLEDGMENT OF INSTRUMENTS

### 66-22-101. Authentication.

Unless otherwise provided by law, to authenticate an instrument or document for registration or recording in the office of the county register, the maker or the natural person acting on behalf of the maker shall execute the instrument or document by that person's original signature and such signature shall be either acknowledged according to

law or proved by at least two (2) subscribing witnesses. The county register may refuse to record any instrument or document not authenticated in accordance with this section.

**66-22-102. Persons authorized to take acknowledgments within state.**

If the person executing the instrument resides or is within the state, the acknowledgment shall be made before the county clerk, or legally appointed deputy county clerk; or clerk and master of chancery court of some county in the state or before a notary public of some county in this state.

**66-22-103. Acknowledgment in other states or territories.**

If the person executing the instrument resides or is beyond or without the limits of the state, but within the union or its territories or districts, the acknowledgment may be made:

(1) Before any court of record, or before the clerk of any court of record; or, before a commissioner for Tennessee, appointed by the governor; or before a notary public authorized there to take proof or acknowledgments. If the acknowledgment is made before a court of record, a copy of the entry of the acknowledgment on the record shall be certified by the clerk, under the clerk's seal of office; and the judge, chief justice, or presiding magistrate of the court shall certify as to the official character of the clerk; or

(2) Before any other officer of such state, territory or district, authorized by the laws there to take the proof and acknowledgment of deed. There shall in cases under this subdivision be subjoined or attached to the certificate of proof or acknowledgment, signed by such other officer, a certificate of the secretary of state of the state or territory in which such officer resides, under the seal of such state, territory, or a certificate of the clerk of a court of record of such state, territory, or district, in the county in which the officer resides or in which the officer took such proof or acknowledgment under the seal of such court, stating that such officer was, at the time of taking such proof or acknowledgment duly authorized to take acknowledgments and proof of deeds of lands in the state, territory, or district, and that the secretary of state or clerk of court is well acquainted with the handwriting of such officer, and that the officer verily believes that the signature affixed to such certificate of proof or acknowledgment is genuine.

**66-22-104. Acknowledgment in foreign countries.**

(a) If the person executing the instrument resides or is beyond the limits of the union and its territories, the acknowledgment may be made:

(1) Before a commissioner for Tennessee appointed in the country where the acknowledgment is made, having an official seal;

(2) Before a notary public of such country, having an official seal; and

(3) Before a consul, charge d'affaires, envoy, minister, or ambassador of the United States in the country to which such person is accredited and where the acknowledgment is made.

(b) When the seal affixed contains the name or official style of such officer, any error, in stating or failing to state otherwise such name or official style of the officer, shall not render the certificate defective.

**66-22-105. Authentication of instruments by or to county clerk.**

The probate or acknowledgment of any deed or other instrument, made by or to a clerk of any county, may be taken and made before the judge having probate jurisdiction in the

clerk's county, the clerk and master or the notary public, and the authentication entered on record in the office of the county clerk as other instruments; provided, that the clerk collect and account for the state tax on all such instruments as though the acknowledgment had been taken before the clerk.

**66-22-106. Postponement pending identification.**

(a) If the clerk or deputy clerk does not know, is not personally acquainted with, or does not have satisfactory evidence that, a person wishing to make acknowledgment of the execution of an instrument, the clerk or deputy clerk shall file it, and note, on the record of the probate of deeds, the date of the presentation of the instrument, and the reason of the postponement of the acknowledgment; and then, within twenty (20) days, the party may produce witnesses before the clerk or deputy clerk, to prove the identity of the person so offering to acknowledge the same; and the deed, when acknowledged after such proof, shall take effect from the filing with the clerk.

(b) For purposes of this chapter, "know" or "personally acquainted with" means having an acquaintance, derived from association with the individual in relation to other people and based upon a chain of circumstances surrounding the individual, which establishes the individual's identity with at least reasonable certainty.

(c) For the purposes of this chapter, "satisfactory evidence" means the absence of any information, evidence, or other circumstances which would lead a reasonable person to believe that the person making the acknowledgment is not the individual such person claims to be and any one (1) of the following:

(1) The oath or affirmation of a credible witness personally known to the officer that the person making the acknowledgment is personally known to the witness.

(2) Reasonable reliance on the presentation to the officer of any one of the following, if the document is current or has been issued within five (5) years:

(A) An identification card or driver's license issued by the department of safety; or

(B) A passport issued by the United States department of state.

(3) Reasonable reliance on the presentation of any one (1) of the following, if the document is current or has been issued within five (5) years and contains a photograph and description of the person named on it, is signed by the person, bears a serial or other identifying number, and, in the event that the document is a passport, has been stamped by the United States immigration and naturalization service:

(A) A passport issued by a foreign government;

(B) A driver's license issued by a state other than Tennessee;

(C) An identification card issued by a state other than Tennessee; or

(D) An identification card issued by any branch of the armed forces of the United States.

(d) An officer who has taken an acknowledgment pursuant to this section shall be presumed to have operated in accordance with the provisions of this chapter.

(e) Any party who files an action for damages based on the failure of the officer to establish the proper identity of the person making the acknowledgment shall have the burden of proof in establishing the negligence or misconduct of the officer.

**66-22-107. Form of certificate of acknowledgment.**

(a) If the acknowledgment is made before a county clerk or deputy, or clerk and master, or notary public, or before any of the officers out of the state who are

commissioned or accredited to act at the place where the acknowledgment is taken, and having an official seal, viz: those named in §§ 66-22-103 and 66-22-104, and, also, any consular officer of the United States having an official seal, such officer shall write upon or annex to the instrument the following certificate, in which the officer shall set forth such officer's official capacity:

State of Tennessee  
County of

Personally appeared before me, (name of clerk or deputy), clerk (or deputy clerk) of this county, (bargainor's name), the within named bargainor, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who acknowledged that such person executed the within instrument for the purposes therein contained.

Witness my hand, at office, this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(b) Or, in the alternative, the following certificate, in case of natural persons acting in their own right:

State of Tennessee  
County of

On this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me personally appeared \_\_\_\_\_, to me known to be the person (or persons) described in and who executed the foregoing instrument, and acknowledged that such person (or persons) executed the same as such person (or person's) free act and deed.

(c) Or, in case of natural persons acting by attorney:

State of Tennessee  
County of

On this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me personally appeared \_\_\_\_\_, to me known (or proved to me on the basis of satisfactory evidence) to be the person who executed the foregoing instrument in behalf of \_\_\_\_\_ acknowledged that such person executed the same as the free act and deed of \_\_\_\_\_.

**66-22-108. Acknowledgment for record of corporate or partnership instrument.**

(a) The authentication or acknowledgment for record of a deed or other instrument in writing executed by a corporation, whether it has a seal or not, shall be good and sufficient, when made in substantially the following form:

State of  
County of

Before me, \_\_\_\_\_ of the state and county mentioned, personally appeared \_\_\_\_\_ with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be president (or other officer authorized to execute the instrument) of \_\_\_\_\_, the within named bargainor, a corporation, and that such president or officer as such \_\_\_\_\_, executed the foregoing instrument for the purpose therein contained, by personally signing the name of the corporation as \_\_\_\_\_.

Witness my hand and seal, at office, this \_\_ day of \_\_\_\_\_, 19 \_\_.

Or, alternatively as follows:

State of  
County of

On this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_, before me appear A. B., to me personally

known (or proved to me on the basis of satisfactory evidence), who, being by me duly sworn (or affirmed) did say that such person is the president (or other officer or agent of the corporation or association) of (describing the corporation or association), and that the seal affixed to the instrument is the corporate seal of the corporation (or association), and that the instrument was Signed and sealed in behalf of the corporation (or association), by authority of its Board of Directors (or Trustees) and A. B. acknowledged the instrument to be the free act and deed of the corporation (or association).

(In case the corporation or association has no corporate seal, omit the words “the seal affixed to the instrument is the corporate seal of the corporation or association and that,” and add at the end of the affidavit clause, the words “and that the corporation (or association) has no corporate seal”). (In all cases add signature and title of officer taking the acknowledgment.)

(b)(l) The authentication or acknowledgment for record of a deed or other instrument in writing executed by a partnership shall be good and sufficient when made in substantially the following form:

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

Before me, \_\_\_\_\_, of the state and county aforementioned, personally appeared \_\_\_\_\_, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged such person to be a partner of \_\_\_\_\_ the within name bargainor, a partnership, and that such person, as such partner, executed the foregoing instrument for the purpose therein contained, by signing the name of the partnership by such person as partner.

Witness my hand and seal, this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(2) The signing of a certificate of acknowledgment for a partnership will not change any requirement of the partnership agreement itself.

**66-22-109. Acknowledgment of married person.**

The acknowledgment of a married person, when required by law, may be taken in the same form as if such person were sole and without any examination separate and apart from that person’s spouse.

**66-22-110. Acknowledgments under seal.**

All acknowledgments shall be under the seal of office of the officer taking same.

**66-22-111. Entry of probate or acknowledgment.**

The clerk shall enter, in a well-bound book, the probate or acknowledgment of every deed or other instrument of writing proved or acknowledged before the clerk, which entry shall state:

- (1) The date of the presentation of the paper where it is filed with the clerk, but is not proven or acknowledged because the witnesses fail or refuse to attend, or the clerk is not acquainted with the maker of the instrument;
- (2) The date of the probate or acknowledgment;
- (3) The names of the maker of the instrument and the person to whom it is made;
- (4) The number of acres of land or town lots, or parts or portions of tracts of land or town lots, or other property mentioned in the paper; and
- (5) A county or town in which the property is situated.

**66-22-112. Fees of clerk.**

For the clerk’s services in this behalf, the clerk shall have the following fees:

(1) For issuing a subpoena for each witness required to be summoned to prove the execution of a writing ..... \$.25

(2) For filing and entering the date of the presentation of a deed or other instrument, when its authentication is not completed at the time of presentation, in addition to the fees allowed by law for taking probates and acknowledgments of deeds and other instruments, and certifying the same ..... \$.10

**66-22-113. Liability of officer for failure to carry out duties.**

If the clerk or other officer who takes the probate or acknowledgment of a deed or other instrument fails or refuses to comply with and discharge the duties required of the clerk or officer, the clerk or officer shall forfeit and pay the sum of one hundred dollars (\$100) for the use of the county in which the clerk or officer resides, which may be recovered by action of debt, in the name of the trustee of the county, in the circuit or chancery court; and the clerk or officer shall, moreover, be liable to the party injured for all damages the clerk or officer may sustain by such failure or refusal, together with costs, to be recovered by action on the case in the circuit or chancery court.

**66-22-114. Certificate of acknowledgment form.**

(a) If the acknowledgment be made before any of the officers who are authorized to take such acknowledgment under the provisions of this chapter or any consular officer of the United States having an official seal, such officer shall write upon or annex to the instrument a certificate of acknowledgment. The following form shall constitute a valid certificate of acknowledgment:

State of  
County of

Personally appeared before me, (name of officer), (official capacity of officer), (name of the natural person executing the instrument), with whom I am personally acquainted, and who acknowledged that such person executed the within instrument for the purposes therein contained (the following to be included only where the natural person is executing as agent), and who further acknowledged that such person is the (identification of the agency position of the natural person executing the instrument, such as “attorney-in-fact” or “president” or “general partner”) of the maker or a constituent of the maker and is authorized by the maker or by its constituent, the constituent being authorized by the maker, to execute this instrument on behalf of the maker.

Witness my hand, at office, this \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

(b) Any certificate clearly evidencing intent to authenticate, acknowledge or verify a document shall constitute a valid certificate of acknowledgment for purposes of this chapter and for any other purpose for which such certificate may be used under the law. It is the legislative intent that no specific form or wording be required in such certificate and that the ownership of property, or the determination of any other right or obligation, shall not be affected by the inclusion or omission of any specific words.

**66-22-115. Recognition of certificate of acknowledgment.** -- (a) The form of a certificate of acknowledgment used by a person whose authority is recognized under § 66-22-103 and 66-22-104, shall be accepted in this state if the

- (1) Certificate is in a form prescribed by the laws or regulations of this state;
  - (2) Certificate is in a form prescribed by the laws or regulations applicable in the other state, or territory, or foreign country in which the acknowledgment is taken.
- (b) A notarial act performed prior to March 29, 1995, is not affected by this section. This section provides an additional method of proving notarial acts. Nothing in this section diminishes or invalidates the recognition accorded to notarial acts by other laws or regulations of this state.

**TITLE 66 PROPERTY**  
**CHAPTER 24 REGISTRATION OF INSTRUMENTS**  
**PART 2 — UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT**

**Section 66-24-203. 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 satisfying this part.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature or a digitized image of a wet 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 or a digitized image of a wet signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

(d) (1) A county register may receive for registration any electronic document that is created by making a digitized image of an original paper document that is eligible for registration, and beginning July 1, 2007, has the certification required by Section 66-24-101(d).

(2) All recordings of electronic documents eligible for registration pursuant to this subsection are validly registered when accepted for recording by the county register. Electronic documents registered by county registers prior to the effective date of this act shall be considered validly registered.

**RULES AND REGULATIONS OF THE STATE OF TENNESSEE**

**CHAPTER 1360. DEPARTMENT OF STATE**  
**CHAPTER 1360-7-2 NOTARY PUBLICS**

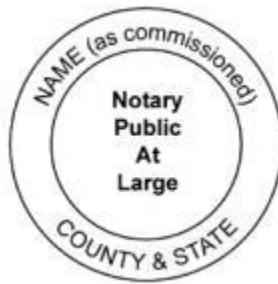
**1360-7-2-.01 NOTARY PUBLIC SEAL OF OFFICE.**

(1) A notary public commissioned on or after July 1, 2004, shall use a notary seal that substantially conforms to the following design: a circular seal with the notary public's name as it appears on the commission printed at the top, the county of election printed at the bottom, and the words "State of Tennessee Notary Public" or "Tennessee Notary Public" printed in the center. A sample seal format appears below.





(2) Effective July 1, 2004, and until the expiration of his/her current term of office, a notary public commissioned prior to July 1, 2004, shall use either the notary seal design identified in section (1), or a notary seal that substantially conforms to the following design: a circular seal with the notary public's name as it appears on the commission printed at the top, the county of election and state printed at the bottom, and "Notary Public at Large" printed in the center. A sample seal format appears below.



Authority: T.C.A. §§ 4-5-202, 8-16-206(a), and Public Acts of 2004, ch. 854. Administrative History: Original rule filed June 10, 2004; effective October 28, 2004.

## **CHAPTER 1360-7-2 ONLINE NOTARIES PUBLIC**

### **1360-07-03-.01 ONLINE NOTARIZATION.**

(1) A notary public who has been properly commissioned to conduct online notarizations may complete authorized notarial acts by means of an electronic interactive two-way audio and video communication that meets the following requirements. An online notarization may not be performed by an individual who has not been commissioned as an online notary public by the Department of State.

(2) The terms used herein shall have the same definitions prescribed in Tennessee Code Annotated §§ 8-16-302. These rules pertain to online notarizations as defined and used throughout T.C.A. §§ 8-16-301, et seq. Notarial acts satisfying the requirements of T.C.A. §§ 8-16-101, et seq., are not affected by these rules.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). Administrative History: Emergency rules filed April 15, 2019; effective through October 12, 2019.

### **1360-07-03-.02 APPLICATION FOR ONLINE NOTARY PUBLIC COMMISSION; RENEWAL.**

(1) A person who has been previously commissioned as a notary public by a county legislative body, and who meets the qualification requirements for commissioning as a notary public as outlined in Tennessee Code Annotated Title 8, Chapter 16, may submit

an application for commissioning as an online notary public by submitting to the Department of State, Division of Business Services, the prescribed application form including the following information:

- (a) The applicant's legal name as listed in the records of the county where the applicant is commissioned as a notary public;
  - (b) The applicant's physical address in this state, as is on record with the clerk of the county in which the notary is commissioned, which includes the street address, city, state, and zip code. The applicant may provide a post office box number for purposes of receiving mail from the Department of State, but must also provide a physical address;
  - (c) A valid email address for the applicant;
  - (d) A valid telephone number for the applicant;
  - (e) The county in this state where the applicant was commissioned as a notary public;
  - (f) The date the applicant was commissioned as a notary public;
  - (g) The date the applicant's commission is set to expire;
  - (h) The name of the vendor and electronic technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document;
  - (i) The name of the vendor and electronic technology or technologies to be used in conducting identity proofing and credential analysis;
  - (j) A copy of the applicant's unique electronic notarial certificate (otherwise known as a digital certificate) or other technology for rendering a notarized electronic document tamper-evident;
  - (k) A copy of the applicant's unique electronic seal, in a file format acceptable to the department;
  - (l) A copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated;
  - (m) A copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public to conduct identity proofing and credential analysis;
  - (n) An explanation of the methods and/or technology by which the online notary public will maintain and store the secure electronic records of all electronic documents notarized by the online notary public in accordance with Rule 1360-07-03-.03(8);
  - (o) A certification confirming that the applicant will comply with the following standards prescribed by the Secretary of State; and
  - (p) An application fee of \$75.00.
- (2) The Secretary of State shall issue an online notary public commission to a qualified applicant who meets the eligibility requirements stated in these rules, has submitted a properly completed and executed application, and has submitted the required application fee.
- (3) When the Secretary of State determines that the applicant has met the qualifications for an online notary public commission, the Secretary of State will issue to the applicant an online notary public identification number, which must be provided to all principals for whom the online notary public performs a notarial act and shall be used for reference in all communications between the online notary public and the Department of State.
- (4) An online notary public may renew his or her online notary public commission by

filing an application for renewal in the same manner and on the same form as if filing an initial application for commission. The renewal must be received by the Secretary of State no later than the expiration date of the online notary public's current commission. The Secretary of State shall determine eligibility for renewals according to the same standards as initial applications, and shall not be bound by prior determinations of eligibility.

Online notary public commissions will terminate on the same date on which the county notary public commission terminates, unless both the county notary public commission is extended and the online notary public submits an application for renewal which is approved.

(5) Applications may be submitted online to the Department of State, Division of Business Services via the online portal established by the Department at sos.tn.gov.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). Administrative History: Emergency rules filed April 15, 2019; effective through October 12, 2019.

### **1360-07-03-.03 PERFORMANCE OF NOTARIAL ACTS.**

(1) An online notary public may perform authorized online notarial acts relating to electronic documents only if the principal personally appears before the online notary public at the time of the notarization; however, such personal appearance may be by means of an electronic two-way audio and video communication.

(2) An online notary public may perform authorized notarial acts by means of an electronic interactive two-way audio and video communication only when the online notary public is physically located within this state, without regard to whether the principal is physically located in this state at the time of the online notarization.

(3) An online notary public shall require the principal to demonstrate, to the satisfaction of the online notary public, that such person is not under duress and is not otherwise being coerced to complete the transaction, in order to preserve the integrity, security, and authenticity of online notarizations. An online notary public is authorized to refuse to perform a notarial act when the online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence.

(4) An online notary public must verify the identity of a principal at the time that the signature is taken by means of two-way video and audio conference technology. Identity may be verified by the online notary public's personal knowledge of the principal, or by:

(a) Remote presentation by the principal of a non-military, government-issued credential, which is an identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been stamped by the United States immigration and naturalization service, and which is unexpired, contains the signature and a photograph of the principal, and which is capable of credential analysis in accordance with Rule 1360-07-03-.05.

(b) Credential analysis of the credential provided by the principal as set forth in Rule 136007-03-.05; and

(c) Identity proofing of the principal as set forth in Rule 1360-07-03-.05.

(5) Under no circumstances shall an online notary public base identification merely on familiarity with a principal's electronic signature or an electronic verification process that authenticates the principal's electronic signature when the principal does not personally appear before the online notary public.

(6) The online notary public shall refuse to complete the performance of a notarial act

where:

- (a) The online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence;
- (b) The online notary public is unable to verify the identity of the principal using the means and the standards identified in these rules;
- (c) The online notary public becomes aware that the security of the two-way audio visual transmission is not secure;
- (d) The signature of the principal cannot be attached to the electronic document; or
- (e) The online notary public's electronic notarial certificate and seal cannot be attached to the electronic document using an electronic technology which renders any subsequent change or modification to the document evident.

(7) The online notary public shall complete and attach a unique electronic notarial certificate to all written notarial acts that identifies the principal, the date of notarization, the state and county in which the notarization was performed, that the notarial act was an online notarization, and the type of notarial act performed. The electronic notarial certificate shall be signed by affixing or logically associating the online notary public's unique electronic notarial certificate, unique electronic signature, and electronic seal in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(8) An online notary public performing authorized notarial acts must also satisfy the following requirements:

An online notary public, or his or her properly designated custodian or repository, must keep, for at least 5 years after the date of the transaction or proceeding, a secure electronic record of all electronic documents notarized by the online notary public, containing all of the following information:

- (a) The date and time of the notarization;
  - (b) The type of notarial act;
  - (c) The type, the title, or a description of the electronic document or proceeding;
  - (d) The printed name and address of each principal involved in the transaction or proceeding;
  - (e) Evidence of the identity of each principal involved in the transaction or proceeding in the form of:
    1. A statement that the principal(s) is personally known to the online notary public; or both
    2. A notation of the type of identification document provided to the online notary public for each principal; and
    3. A notation that the principal(s) completed identity proofing and credential analysis procedures described by Rule 1360-07-03-.05 and both were satisfactory to verify the identity of the principal(s);
  - (f) 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
  - (g) The fee, if any, charged for the notarization.
- (9) The online notary public must take reasonable steps to ensure that the two-way video and audio communication used is encrypted during transmission, through means such as a virtual private network (VPN), and secure from unauthorized interception.
- (10) The online notary public shall not disclose any access information used to affix

the online notary public's electronic notarial certificate, signature, and seal, except when requested by the Secretary of State, law enforcement, the courts, or pursuant to an agreement between the online notary public and an electronic documentation preparation and transmission vendor, which agreement shall have in place reasonable precautions to prevent the unauthorized release of access information.

(11) The online notary public should ensure that all records relating to any individual transaction are securely stored using the Advanced Encryption Standard (AES) as a minimum encryption standard and that the principal's personally identifying information or any government-issued identification numbers cannot be accessed by unauthorized individuals. The online notary public should refrain from recording, or take steps to obscure from the recording, any identification number that was assigned to the principal by a governmental agency or by the United States and any other number(s) that could be used to identify the principal.

(12) 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 backup of the electronic records for the same period of time. Both the original records and the backup shall be protected from unauthorized use. An online notary public may elect to store such recordings with a custodian or repository and such recordings may be stored separately from the journal as long as the corresponding journal entry cross-references the place of storage and describes the manner in which the record is stored.

(13) An online notary public may use his or her electronic signature only for performing online notarizations. The online notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record by also affixing his or her signature and seal to the copy of the electronic record in the traditional manner or other manner authorized by law, but only where the online notary public is capable of independently verifying the document is a true and correct copy of the electronic record.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). Administrative History: Emergency rules filed April 15, 2019; effective through October 12, 2019.

#### **1360-07-03-.04 ELECTRONIC SIGNATURE AND SEAL.**

(1) An online notary public must use the same unique electronic signature for all online notarial acts performed by the online notary public.

(2) An online notary public must use the same unique electronic seal for all online notarial acts performed by the online notary public, and a copy of such seal must be provided to the Department of State at the time of the online notary public's application for certification as an online notary public. The name on the online notary public seal must match the name, as stated on the application, under which the online notary public is commissioned and performs all notarial acts.

(3) An online notary public shall use an electronic seal that substantially conforms to the following design: a circular seal with the notary public's name as it appears on the commission printed at the top, the county of election printed at the bottom, the words "State of Tennessee Notary Public" or "Tennessee Notary Public" printed in the center, and the words "Online Notary Public" printed below, followed by the online notary public's identification number. The electronic seal must also be accompanied by a statement of the date upon which the online notary public's commission expires. A sample seal format appears below:



Online Notary Public  
ID Number

(4) An online notary public must attach or logically associate his or her unique electronic signature and seal to the electronic notarial certificate in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(5) The online notary public must use technology from a third-party provider who has provided the online notary public 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.

(6) The electronic notarial certificate for an online notarization must contain a notation that the notarization is an online notarization, which may be satisfied by affixing the online notary public's seal to the electronic notarial certificate. The acknowledgment contained within the electronic notarial certificate must also contain a statement that the principal "personally appeared before me by audio-video communication" or "personally appeared by audio-video communication" or "before me appeared by audio-video communication".

(7) The online notary public's unique electronic notarial certificate, electronic signature, and electronic seal must remain within the exclusive control of the online notary public (including control by means of use of a password) at all times and shall be used only for the purpose of performing online notarial acts.

(8) The online notary public must provide any necessary instruction or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated.

If at any time the online notary public adopts a new or additional technology or vendor with which to perform online notarial acts, the online notary public must notify the Department of State of the new or additional technology, signature and/or seal, as well as any additional information that may be requested by the Department of State.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). Administrative History: Emergency rules filed April 15, 2019; effective through October 12, 2019.

### **1360-07-03-.05 STANDARDS FOR ONLINE NOTARIZATION.**

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

(2) Requirements for Credential Analysis.

A credential is a non-military identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been stamped by the United States immigration and naturalization service. In order to be valid, the credential must also be unexpired and contain the

photograph and signature of the principal. Credential analysis is the process by which the validity of a non-military government-issued identification credential is verified. Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal. Credential analysis shall, at a minimum:

(a) Use automated processes to aid the online notary public in verifying the identity of a principal;

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

1. Use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;

2. Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;

3. Use reasonable efforts to utilize information held or published by the issuing source or authoritative source(s), as made generally available for commercial purposes, to confirm the validity of personal details and credential details; and,

4. Provide output of the authenticity test to the online notary public; and

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

(3) Requirements for Identity Proofing.

Identity proofing is the process by which the identity of an individual is affirmed by a third party through review of public and proprietary data sources. Identity proofing is performed through dynamic Knowledge Based Authentication (KBA) which meets the following requirements:

(a) The principal must answer a quiz consisting of a minimum of five (5) questions related to the principal's personal history or identity, formulated from public and proprietary data sources;

(b) Each question must have a minimum of five (5) possible answer choices;

(c) At least 80% of questions must be answered correctly;

(d) All questions must be answered within two (2) minutes;

(e) If the principal fails in his or her first attempt, the principal may retake the quiz one time within 24 hours;

(f) During the second attempt, a minimum of 60% of the prior questions must be replaced; and

(g) If the principal fails in his or her second attempt, the principal is not permitted to retry with the same online notary public for a period of 24 hours.

(4) 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.

(5) An online notarization system used to perform online notarial acts by means of two-way audio-video communication shall:

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

(b) Provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak with each other simultaneously through live, realtime transmission;

(c) Provide sufficient captured image resolution for credential analysis to be

performed in accordance with these rules;

(d) Include a means of authentication that reasonably ensures only authorized parties have access to the audio video communication;

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

(f) 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

(g) Provide reasonable security measures to prevent unauthorized access to:

1. The live transmission of the audio-video communication;
2. A recording of the audio-video communication;
3. The verification methods and credentials used to verify the identity of the principal;

and

4. The electronic documents presented for online notarization.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). Administrative History: Emergency rules filed April 15, 2019; effective through October 12, 2019.

#### **1360-07-03-.06 FEES.**

An online notary public, or the online notary public's employer, may charge a fee that does not exceed twenty-five dollars (\$25.00) for performing each online notarization.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). Administrative History: Emergency rules filed April 15, 2019; effective through October 12, 2019.

#### **1360-07-03-.07 CHANGES AFTER COMMISSIONING.**

(1) An online notary public must notify the Secretary of State, on the prescribed form, of any change in address within fifteen (15) days of the date of the change.

(2) An online notary public who changes his or her address, such that the online notary public no longer qualifies for either a traditional notary public commission or an online notary public commission, vacates the office of online notary public and must surrender the online notary public commission to the Secretary of State.

(3) During the term of the online notary public commission, an online notary public may change the name on the online notary public commission by notifying the Secretary of State of the name change on the prescribed form, along with a copy of a court order or other document verifying the change of name and updated copies of the online notary public's electronic notarial certificate, electronic signature, and electronic seal showing the updated name. The Secretary of State shall then issue an amended commission to the online notary public in the updated name. Upon issuance of the amended commission, the online notary public must only conduct notarial acts using the updated electronic notarial certificate, electronic signature, and electronic seal bearing the updated name.

Notwithstanding the above, the online notary public must first ensure that he or she has appropriately changed his or her name with respect to his or her traditional notary public commission in the county in which the commission was issued before updating his or her name relating to the online notary public commission.

(4) An online notary public who replaces or changes an electronic notarial certificate or electronic seal during the term of the online notary public commission must provide an updated copy of the electronic notarial certificate or electronic seal to the Secretary of



State prior to conducting any notarial acts using the updated electronic notarial certificate or electronic seal.

(5) If at any time during the term of the online notary commission the online notary public elects to use a new vendor or technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document, the online notary public must provide to the Secretary of State the name of the vendor and electronic technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document and a copy of any necessary instructions or techniques supplied by the vendor that allow the online notary public's electronic signature and seal to be read and authenticated prior to conducting any notarial acts using the new vendor or technology or technologies.

(6) If at any time during the term of the online notary public commission the online notary public elects to use a new vendor or technology or technologies to be used in conducting identity proofing and credential analysis, the online notary public must provide to the Secretary of State the name of the vendor and electronic technology or technologies to be used in conducting identity proofing and credential analysis and a copy of any necessary instructions or techniques supplied by the vendor that allow the online notary public to conduct identity proofing and credential analysis prior to conducting any notarial acts using the new vendor or technology or technologies.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). Administrative History: Emergency rules filed April 15, 2019; effective through October 12, 2019.

### **1360-07-03-.08 TERMINATION OF COMMISSION.**

If the Secretary of State determines that any online notary public has not complied with these regulations or the provisions of Tennessee Code Annotated Title 8, Chapter 16 related to online notarization, the Secretary of State shall terminate the commission of the online notary public.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). Administrative History: Emergency rules filed April 15, 2019; effective through October 12, 2019.