

WEST VIRGINIA CODE

**CHAPTER 39. RECORDS AND PAPERS
ARTICLE 1. AUTHENTICATION AND RECORD OF WRITINGS**

§39-1-4. Form of certificate of acknowledgment.

The certificate of acknowledgment mentioned in the preceding section may be in form or effect as follows:

State (territory or district) of, county of, to wit:

I,, recorder of said municipality; or I,, a notary public of said county; or I,, a clerk of the court of said county; (or other officer or person authorized to take acknowledgments by section three of this article, as the case may be), do certify that, whose name (or names) is (or are) signed to the writing above (or hereto annexed) bearing date on the day of, 20, has (or have) this day acknowledged the same before me, in my said

Given under my hand this day of, 20

§39-1-5. Acknowledgment by husband and wife.

When a husband and wife have signed a writing purporting to sell or convey real estate, the wife may acknowledge the same together with, or separately from her husband. Either the husband or the wife may sign and acknowledge the writing before the other has signed or acknowledged it. If both acknowledge the writing at the same time, the certificate of the acknowledgments may be in form or effect as follows:

State (territory or district) of county of, to wit:

I,, a notary public of the said county of; or I,, clerk of the court or county of; (or other officer or person authorized to take acknowledgments by section three of this article, as the case may be),* do certify and, his or her wife whose names are signed to the writing above (or hereto annexed) bearing date the day of, 20....., have this day acknowledged the same before me in my said

Given under my hand this day of, 20.....

If the husband or wife acknowledge a deed or other writing separately from the other, the certificate of acknowledgment after the star in the foregoing form shall be in form or effect as follows: do certify that, the wife of, (or the husband of, as the case may be), whose name is signed to the writing above (or hereto annexed) bearing date the day of, 20, has this day acknowledged the same before me in my said

Given under my hand this day of, 20

ARTICLE 4. REVISED UNIFORM LAW ON NOTARIAL ACTS.

§39-4-1. Short title.

This article may be cited as the Revised Uniform Law on Notarial Acts.

§39-4-2. Definitions.

In this article:

(1) "Acknowledgment" means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the

record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

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

(3) “Electronic signature” means an electronic symbol, sound or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

(4) “In a representative capacity” means acting as:

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

(B) A public officer, personal representative, guardian or other representative, in the capacity stated in a record;

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

(D) An authorized representative of another in any other capacity.

(5) “Notarial act” means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(6) “Notarial officer” means a notary public or other individual authorized to perform a notarial act.

(7) “Notary public” means an individual commissioned to perform a notarial act by the West Virginia Secretary of State.

(8) “Official stamp” means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

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

(10) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(11) “Sign” means, with present intent to authenticate or adopt a record:

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

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

(12) “Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.

(13) “Stamping device” means:

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

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

(14) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(15) “Verification on oath or affirmation” means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

§39-4-3. Applicability; operative date of enactment; effect on existing law.

(a) This article applies to a notarial act performed on or after July 1, 2014.

(b) The repeal of chapter twenty-nine-c of this code and the repeal of articles four, chapter twenty-nine and one-a, chapter thirty-nine of this code and the amendment and reenactment of section two, article one, chapter fifty-nine of this code, pursuant to the provisions of Enrolled House Bill No. 4012, as enacted by the Legislature during the regular session, 2014, are operative on June 30, 2014. The prior enactments of chapter twenty-nine-c; articles four, chapter twenty-nine and one-a, chapter thirty-nine; and section two, article one, chapter fifty-nine of this code, whether amended and reenacted or repealed by the passage of Enrolled House Bill No. 4012, have full force and effect until the provisions of Enrolled House Bill No. 4012, are operative on June 30, 2014, unless after the effective date of Enrolled House Bill No. 4012, and prior to the operative date of June 30, 2014, the provisions of Enrolled House Bill No. 4012, are otherwise repealed or amended and reenacted.

§39-4-4. Authority to perform notarial act.

(a) A notarial officer may perform a notarial act authorized by this article or by law of this state other than this article.

(b) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse is a party, or in which either of them has a direct beneficial interest, financial or otherwise. A notarial act performed in violation of this subsection is voidable.

§39-4-5. Requirements for certain notarial acts.

(a) A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

(b) A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

(c) A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.

(d) A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true and accurate transcription or reproduction of the record or item.

(e) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in subsection (b), section five hundred five, article three, chapter forty-six of this code.

§39-4-6. Personal appearance required.

If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer. An individual making the statement or executing the signature does not appear personally if the appearance is by video or audio technology, even if the video is synchronous.

§39-4-7. Identification of individual.

(a) A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(b) A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(1) By means of:

(A) A passport, driver's license or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act; or

(B) Another form of government identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual and is satisfactory to the officer; or

(2) By a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act.

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

§39-4-8. Authority to refuse to perform notarial act.

(a) A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

(1) The individual executing the record is competent or has the capacity to execute the record; or

(2) The individual's signature is knowingly and voluntarily made.

(b) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than this article.

§39-4-9. Signature if individual is unable to sign.

If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the individual's name on the record. The notarial officer shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

§39-4-10. Notarial act in this state.

(a) A notarial act may be performed in this state by:

(1) A notary public of this state;

(2) A judge, clerk or deputy clerk of a court of this state; or

(3) Any other individual authorized to perform the specific act by the law of this state.

(b) The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (1) or (2), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.

§39-4-11. Notarial act in another state.

(a) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by:

- (1) A notary public of that state;
- (2) A judge, clerk or deputy clerk of a court of that state; or
- (3) Any other individual authorized by the law of that state to perform the notarial act.

(b) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (1) or (2), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.

§39-4-12. Notarial act under authority of federally recognized Indian tribe.

(a) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this state, if the act performed in the jurisdiction of the tribe is performed by:

- (1) A notary public of the tribe;
- (2) A judge, clerk or deputy clerk of a court of the tribe; or
- (3) Any other individual authorized by the law of the tribe to perform the notarial act.

(b) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (1) or (2), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.

§39-4-13. Notarial act under federal authority.

(a) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by:

- (1) A judge, clerk or deputy clerk of a court;
- (2) An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;
- (3) An individual designated a notarizing officer by the United States Department of State for performing notarial acts overseas; or
- (4) Any other individual authorized by federal law to perform the notarial act.

(b) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of an officer described in subdivision (1), (2) or (3), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.

§39-4-14. Foreign notarial act.

(a) In this section, “foreign state” means a government other than the United States, a state or a federally recognized Indian tribe.

(b) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.

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

(d) The signature and official stamp of an individual holding an office described in subsection (c) of this section are prima facie evidence that the signature is genuine and the individual holds the designated title.

(e) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(f) A consular authentication issued by an individual designated by the United States Department of State as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

§39-4-15. Certificate of notarial act.

(a) A notarial act must be evidenced by a certificate. The certificate must:

- (1) Be executed contemporaneously with the performance of the notarial act;
- (2) Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the Secretary of State;
- (3) Identify the jurisdiction in which the notarial act is performed;
- (4) Contain the title of office of the notarial officer; and
- (5) If the notarial officer is a notary public, indicate the date of expiration, if any, of the officer's commission.

(b) If a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in subdivisions (2), (3) and (4), subsection (a) of this section, an official stamp may be affixed to the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in said subdivisions, an official stamp may be attached to or logically associated with the certificate.

(c) A certificate of a notarial act is sufficient if it meets the requirements of subsections (a) and (b) and:

- (1) Is in a short form set forth in section sixteen of this article;
- (2) Is in a form otherwise permitted by the law of this state;
- (3) Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or
- (4) Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in sections five, six and seven of this article or law of this state other than this article.

(d) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in

sections four, five and six of this article.

(e) A notarial officer may not affix the officer’s signature to, or logically associate it with, a certificate until the notarial act has been performed.

(f) If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to or logically associated with, the electronic record. If the Secretary of State has established standards pursuant to section twenty-five of this article, for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

§39-4-16. Short form certificates.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by subsections (a) and (b), section fifteen of this article:

(1) For an acknowledgment in an individual capacity:

State of

County of

This record was acknowledged before me on [Date] by
[Name(s) of individual(s)]

.....

Signature of notarial officer

Stamp

.....

Title of office

My commission expires:

(2) For an acknowledgment in a representative capacity:

State of

County of

This record was acknowledged before me on [Date] by
..... [Name(s) of individual(s)] as [Type
of authority, such as officer or trustee] of [Name of party on behalf of
whom record was executed].

.....

Signature of notarial officer

Stamp

.....

Title of office

My commission expires:

(3) For a verification on oath or affirmation:

State of

County of

Signed and sworn to (or affirmed) before me on (Date) by
..... [Name(s) of individual(s) making statement]

.....

Signature of notarial officer

Stamp

.....

Title of office

My commission expires:

(4) For witnessing or attesting a signature:

State of

County of

Signed or attested before me on [Date] by

[Name(s) of individual(s) making statement]

.....

Signature of notarial officer

Stamp

.....

Title of office

My commission expires:

(5) For certifying a copy of a record:

State of

County of

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

.....

Dated

.....

Signature of notarial officer

Stamp

.....

Title of office

My commission expires:

§39-4-17. Official stamp.

The official stamp of a notary public must:

(1) Include the notary public’s name, address, jurisdiction, commission expiration date and other information required by the Secretary of State; and

(2) Be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

§39-4-18. Stamping device.

(a) A notary public is responsible for the security of the notary public’s stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, the notary public’s commission, or on the expiration of the date set forth in the stamping device, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public’s personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable.

(b) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the Secretary of State on discovering that the device is lost or stolen.

§39-4-19. Notification regarding performance of notarial act on electronic record, selection of technology.

(a) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(b) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the Secretary of State has established standards for approval of technology pursuant to section twenty-five of this article, the technology must conform to the standards. If the technology conforms to the standards, the Secretary of State shall approve the use of the technology.

§39-4-20. Commission as notary public; qualifications; no immunity or benefit; disposition of fees.

(a) An individual qualified under subsection (b) of this section may apply to the Secretary of State for a commission as a notary public through the Secretary of State's online notary system. The applicant shall comply with and provide the information required by rules promulgated by the Secretary of State and pay any application fee.

(b) An applicant for a commission as a notary public must:

- (1) Be at least eighteen years of age;
- (2) Be a citizen or permanent legal resident of the United States;
- (3) Be a resident of or have a place of employment or practice in this state;
- (4) Be able to read and write English;
- (5) Have a high school diploma or its equivalent; and
- (6) Not be disqualified to receive a commission under Section 39-4-23 of this code.

(c) Before issuance of a commission as a notary public, an applicant shall provide a statement on the notary application that they solemnly swear or affirm, under penalty of perjury, that the answers to all questions in this application are true, complete, and correct; that he or she has carefully read the notaries public law of West Virginia; and, if appointed and commissioned as a notary public, he or she will perform faithfully, to the best of his or her ability all notarial acts in accordance with the law.

(d) On compliance with this section, the Secretary of State shall issue a commission as a notary public to an applicant for a term of five years.

(e) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.

§39-4-21. Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public.

(a) The Secretary of State may deny, refuse to renew, revoke, suspend or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public,

including:

- (1) Failure to comply with this article;
 - (2) A fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the Secretary of State;
 - (3) A conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty or deceit;
 - (4) A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty or deceit;
 - (5) Failure by the notary public to discharge any duty required of a notary public, whether by this article, rules promulgated by the Secretary of State, or any federal or state law;
 - (6) Use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right or privilege that the notary does not have;
 - (7) Violation by the notary public of a rule of the Secretary of State regarding a notary public;
 - (8) Denial, refusal to renew, revocation, suspension or conditioning of a notary public commission in another state;
 - (9) Failure of the notary public to maintain an assurance as provided in subsection (d), section twenty of this article;
 - (10) Charging more than the maximum fees specified in section thirty of this article; and
 - (11) Failure to notify the Secretary of State of an address or name change pursuant to subsection (b), section twenty-two of this article.
- (b) If the Secretary of State denies, refuses to renew, revokes, suspends or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with article five, chapter twenty-nine-a of this code.
- (c) The authority of the Secretary of State to deny, refuse to renew, suspend, revoke or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

§39-4-22. Database of notaries public.

- (a) The Secretary of State shall maintain an electronic database of notaries public:
- (1) Through which a person may verify the authority of a notary public to perform notarial acts; and
 - (2) Which indicates whether a notary public has notified the Secretary of State that the notary public will be performing notarial acts on electronic records.
- (b) Not later than thirty days after a notary public either:
- (1) Changes the address of his or her business or residence; or
 - (2) Changes his or her name, the notary public shall notify the Secretary of State of the address or name change.

§39-4-23. Prohibited acts.

- (a) A commission as a notary public does not authorize an individual to:
- (1) Assist persons in drafting legal records, give legal advice or otherwise practice law;
 - (2) Act as an immigration consultant or an expert on immigration matters;

(3) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship or related matters; or

(4) Receive compensation for performing any of the activities listed in this subsection.

(b) A notary public may not engage in false or deceptive advertising.

(c) A notary public, other than an attorney licensed to practice law in this state, may not use the term “notario” or “notario publico”.

(d) A notary public, other than an attorney licensed to practice law in this state, may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law. If a notary public who is not an attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in a record, including broadcast media, print media and the internet, the notary public shall include the following statement, or an alternate statement authorized or required by the Secretary of State, in the advertisement or representation, prominently and in each language used in the advertisement or representation: “I am not an attorney licensed to practice law in this state. I am not allowed to draft legal records, give advice on legal matters, including immigration, or charge a fee for those activities”. If the form of advertisement or representation is not broadcast media, print media or the internet and does not permit inclusion of the statement required by this subsection because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(e) Except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.

§39-4-24. Validity of notarial acts.

Except as otherwise provided in subsection (b), section four of this article, the failure of a notarial officer to perform a duty or meet a requirement specified in this article does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this article does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than this article or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

§39-4-25. Rules.

(a) The Secretary of State may promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement this article. Rules promulgated regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may:

(1) Prescribe the manner of performing notarial acts regarding tangible and electronic records;

(2) Include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;

(3) Include provisions to ensure integrity in the creation, transmittal, storage or authentication of electronic records or signatures;

(4) Prescribe the process of granting, renewing, conditioning, denying, suspending or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public;

(5) Include provisions to prevent fraud or mistake in the performance of notarial acts;

(6) Establish the process for approving and accepting surety bonds and other forms of assurance under subsection (d), section twenty of this article; and

(7) Establish fees, with legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. Fees collected by the Secretary of State pursuant to section two, article one, chapter fifty-nine of this code shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required by the provisions of article four, chapter thirty-nine of this code.

(b) In promulgating, amending or repealing rules about notarial acts with respect to electronic records, the Secretary of State shall consider, so far as is consistent with this article:

(1) The most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State;

(2) Standards, practices and customs of other jurisdictions that substantially enact this article; and

(3) The views of governmental officials and entities and other interested persons.

§39-4-26. Notary public commission and commissioner appointment in effect.

(a) A commission as a notary public in effect on June 30, 2014, continues until its date of expiration. A notary public who applies for a commission as a notary public on or after July 1, 2014, is subject to and shall comply with this article. A notary public, in performing notarial acts on or after July 1, 2014, shall comply with this article.

(b) An appointment as commissioner under the repealed provisions of article four, chapter twenty-nine of this code, in effect on June 30, 2014, continues until its date of expiration. A commissioner, in performing notarial acts on or after July 1, 2014, shall comply with this article: Provided, That a person holding a commission pursuant to the provisions of article four, chapter twenty-nine of this code, on June 30, 2014, is not required to obtain or use a stamp required by section seventeen of this article, prior to the expiration of that commission.

§39-4-27. Savings clause.

This article does not affect the validity or effect of a notarial act performed before July 1, 2014.

§39-4-28. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§39-4-29. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, and supersedes the Electronic Signatures in Global and

National Commerce Act, 15 U. S. C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U. S. C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U. S. C. Section 7003(b).

§39-4-30. Maximum fees.

(a) The maximum fee in this state for notarization of each signature and the proper recordation thereof in the journal of notarial acts is \$5.00 for each signature notarized.

(b) The maximum fee in this state for certification of a facsimile of a document, retaining a facsimile in the notary's file, and the proper recordation thereof in the journal of notarial acts is \$5.00 for each eight and one-half by eleven inch page retained in the notary's file.

(c) The maximum fee in this state is \$5.00 for any other notarial act performed.

§39-4-31. Government notaries public.

(a) State and local government employees may be commissioned as government notaries public to act for and in behalf of their respective state and local government offices.

(b) A state or local government employee commissioned under this section shall meet the requirements for qualification and appointment prescribed in this article except that the head of the state or local government office where the applicant is employed, or his or her designee, shall execute a certificate that the application is made for the purposes of the office and in the public interest and submit it to the Secretary of State together with the application for appointment as a notary public.

(c) The costs of application and all notary supplies for a commissioned state or local government employee shall be paid from funds available to the office in which he or she is employed.

(d) All fees received for notarial services by a government notary public appointed for and in behalf of a state or local government office shall be remitted by him or her to the state or local government office in which he or she is employed.

(e) A government notary public must comply with all provisions of this article in the performance of notarial acts.

(f) A government notary public may acknowledge any document required to be acknowledged by a notary public: Provided, That a government notary public may not operate privately.

§39-4-32. Liability of notary and of an employer of notary.

(a) A notary public is liable to the persons involved for all damages proximately caused by the notary's official misconduct.

(b) The employer of a notary public is also liable to the persons involved for all damages proximately caused by the notary's official misconduct, if:

(1) The notary public was acting within the scope of his or her employment at the time he or she engaged in the official misconduct; and

(2) The employer consented to the notary public's official misconduct.

(c) It is not essential to a recovery of damages that a notary's official misconduct be the only proximate cause of the damages.

(d) For the purposes of this section, the term "official misconduct" means any act or conduct that:

- (1) May result in the denial, refusal to renew, revocation, suspension or condition commission of a notary public pursuant to section twenty-one of this article; or
- (2) Is prohibited by section twenty-three of this article.

§39-4-33. Criminal penalties.

(a) A notary public who knowingly and willfully commits any official misconduct is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$5,000 or confined in jail not more than one year, or both fined and confined.

(b) A notary public who recklessly or negligently commits any official misconduct is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000.

(c) Any person who acts as, or otherwise willfully impersonates, a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$5,000 or confined in jail not more than one year, or both fined and confined.

(d) Any person who unlawfully possesses a notary's official seal or any papers or copies relating to notarial acts, is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000.

(e) For the purposes of this section, the term "official misconduct" means any act or conduct that:

- (1) May result in the denial, refusal to renew, revocation, suspension or condition commission of a notary public pursuant to section twenty-one of this article; or
- (2) Is prohibited by section twenty-three of this article.

§39-4-34. Action for injunction; unauthorized practice of law.

Upon his or her own information or upon complaint of any person, the Attorney General, or his or her designee, may maintain an action for injunctive relief in circuit court against any notary public who renders, offers to render or holds himself or herself out as rendering any service constituting the unauthorized practice of the law. Any organized bar association in this state may intervene in the action, at any stage of the proceeding, for good cause shown. The action may also be maintained by an organized bar association in this state or by the Secretary of State.

§39-4-35. Administrative complaints and investigations.

(a) In addition to the powers and duties contained in this article, the Secretary of State may:

(1) Investigate, upon complaint or on his or her own initiative, any alleged violations or irregularities of this article.

(2) Administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and all other evidence necessary to any investigation.

(3) Involve the aid of any circuit court in the execution of its subpoena power.

(4) Report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall present to the grand jury the alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(b) The Attorney General shall, when requested, provide legal and investigative assistance to the Secretary of State.

§39-4-36. Secretary of State record retention.

(a) The provisions of subsection (c), section three, article two, chapter five of this code notwithstanding, the Secretary of State may destroy original records of appointment under this article after expiration of the term of a notary public: Provided, That the Secretary of State maintains an electronic copy of the appointment for a minimum of ten years after the expiration of the term of the notary public.

(b) The Secretary of State may destroy any original journals of notarial acts in his or her possession: Provided, That an electronic copy is maintained in accordance with the retention rules of the Department of Administration.

ARTICLE 4A. OUT-OF-STATE COMMISSIONERS.

§39-4A-1. Commissioners out of state; qualifications; application fee. (Effective June 7, 2019)

(a) The Secretary of State may appoint a qualified person residing within or without this state and within the United States, its territories, or possessions as a commissioner to acknowledge signatures performed in or out of this state by persons residing in or out of the state of West Virginia covering deeds, leases, and other writings pertaining to West Virginia property for recordation in the state of West Virginia.

(b) To be qualified for an appointment pursuant to subsection (a) of this section, a person must be commissioned as a notary public pursuant to §39-4-20 of this code.

(c) An individual qualified under subsection (b) of this section may apply to the Secretary of State for a commission and shall comply with and provide the information required by subsection (d) of this section and pay the requisite fee.

(d) Applications for appointment as a commissioner must be made in the form and manner as prescribed by the Secretary of State. The application must include the following information:

- (1) Full name;
- (2) Date of birth;
- (3) Legal residential address;
- (4) Employer, if any;
- (5) Daytime phone number;
- (6) Email address;
- (7) Applicant's signature; and
- (8) Any other information deemed necessary by the Secretary of State.

(e) The Secretary of State may deny, refuse to renew, revoke, suspend, or impose a condition on a commission for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a commissioner, including:

- (1) Failure to comply with this article;
- (2) A fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission submitted to the Secretary of State;
- (3) A conviction of the applicant or commissioner for any felony or for a crime involving fraud, dishonesty, or deceit;
- (4) A finding against, or admission of liability by, the applicant or commissioner in any legal proceeding or disciplinary action based on the applicant's or commissioner's fraud, dishonesty, or deceit;

(5) Failure by the commissioner to discharge any duty required of a commissioner, whether by this article, rules promulgated by the Secretary of State, or any federal or state

law;

(6) Use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right, or privilege that the notary does not have;

(7) Revocation, suspension, or refusal or failure to renew the commissioner's commission as a notary public pursuant to §39-4-1 et seq. of this code;

(8) Violation by the commissioner of a rule of the Secretary of State regarding a commissioner; and

(9) Denial, refusal to renew, revocation, suspension, or conditioning of a commission in another state.

(f) Before issuance of a commission, an applicant shall provide at the time of application a statement that he or she solemnly swears or affirms, under penalty of perjury, that the answers to all questions in this application are true, complete, and correct; and, if appointed and commissioned, he or she will perform faithfully, to the best of his or her ability, all acts in accordance with the law.

(g) A nonrefundable fee of \$500 for each commission issued shall be paid to the Secretary of State: Provided, That the Secretary of State shall have the authority to refund some or all of the application fee for denials resulting from good-faith mistakes made by applicants.

(h) All fees and moneys collected by the Secretary of State pursuant to the provisions of this section shall be deposited by the Secretary of State as follows:

(1) One-half shall be deposited in the state General Revenue Fund; and

(2) One-half shall be deposited in the service fees and collections account established by §59-1-2 of this code for the operation of the Office of the Secretary of State.

§39-4A-2. Powers of commissioners; official seals. (Effective June 7, 2019)

(a) Upon approval of a successful application, commissioners shall hold office for 10 years, unless removed by the Secretary of State under the grounds set forth in §39-4A-1(e) of this code.

(b) When any oath may lawfully be administered, or affidavit or deposition taken, within the state, territory, or district for which any such commissioner is appointed, to be used in this state, it may be done by the commissioner.

(c) Each commissioner shall have an official seal, which shall be a rubber stamp and shall contain:

(1) The words "Official Seal";

(2) The words "Commissioner for West Virginia";

(3) The commissioner's name exactly as it is written as an official signature;

(4) The city and state of residence of the commissioner; and

(5) The words "My Commission Expires" and the date of expiration of the commission.

(d) A stamped imprint of the seal, together with the official signature, shall be filed in the office of the Secretary of State.

(e) Commissioners may take, within or any place out of the State of West Virginia, the acknowledgements of deeds and other writings to be admitted to the record in the State of West Virginia, but each acknowledgement shall reflect where the acknowledgement was taken, including, but not limited to, the state and county or territory.

(f) Every certificate of the commissioner shall be authenticated by his or her signature and official seal.

§39-4A-3. Prohibited acts. (Effective June 7, 2019)

Commissioners shall refrain from the following prohibited activities:

- (1) Assisting persons in drafting legal records, giving legal advice, or otherwise practicing law;
- (2) Acting as an immigration consultant or an expert on immigration matters; or
- (3) Representing a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters.
- (4) No provision of this section shall be construed to prohibit the practice of law by a duly licensed attorney.

§39-4A-4. Rulemaking. (Effective June 7, 2019)

The Secretary of State may propose rules for legislative approval to implement this article, in accordance with the provisions of §29A-3-1 et seq. of this code.

§39-4A-5. Incorporation of Revised Uniform Law on Notarial Acts; online database.

- (a) All requirements, duties, prohibitions, penalties, and procedures set forth in §39-4-1 et seq. of this code that are consistent with the foregoing provisions of this article shall apply to commissioners.
- (b) The Secretary of State shall include all active commissioners in its database of notaries public set forth in §39-4-22 of this code, which database shall clearly distinguish commissioners from notaries public.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 4. DEPOSITIONS AND PERPETUATION OF TESTIMONY.

§57-4-2. Taking and certification of depositions -- Out-of state and in foreign countries.

On affidavit that a witness resides out of this state, or is out of it in the service thereof, or of the United States, or is out of this state and for justifiable reasons will probably be out of this state until after the trial of the case in which his or her testimony is needed, his or her deposition may be taken by or before any justice, notary public or other officer authorized to take depositions in the state wherein the witness may be, or, if the deposition is to be taken in a foreign country, by or before such commissioner or commissioners as may be agreed upon by the parties or appointed by the court, or, if there be none such, by or before any American minister, plenipotentiary, charge d'affaires, consul general, consul, vice consul, consular agent, vice deputy consular agent, commercial agent or vice commercial agent, appointed by the government of the United States, or by or before the mayor or other chief magistrate of any city, town or corporation in the country or any notary public therein. Any person or persons taking the deposition may administer an oath to the witness and take and certify the deposition with his or her official seal annexed, and if he or she have none, the genuineness of his or her signature shall be authenticated by some officer of the same state or country, under his or her official seal.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§57-5-9. Administration of oaths or taking of affidavits; authentication of affidavit made in another state or country; oaths and affidavits of persons in military service.

Any judge of this state may administer any oath that is or may be lawful for any person to take, including oaths of office, and also may swear any person to an affidavit, and administer an oath to any person in any proceeding.

Any oath or affidavit required by law, which is not of such a nature that it must be made otherwise or elsewhere may, unless otherwise provided, be administered by, or made before, a county commissioner, notary public, or by the clerk of any court, or, in case of a survey directed by a court in a case therein pending, by or before the surveyor directed to execute said order of survey.

An affidavit may also be made before any officer of another state or country authorized by its laws to administer an oath, and shall be deemed duly authenticated if it be subscribed by the officer, with his or her official seal annexed, and if he or she have none, the genuineness of his or her signature, and his or her authority to administer an oath, shall be authenticated by some officer of the same state or country under his or her official seal.

Any oath or affidavit required of a person in the military service of the United States (including the Women's Army Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, Spars, Women's Reserve or similar women's auxiliary unit officially connected with the military service of the United States), may be administered by or made before any commissioned officer of any branch of the military service of the United States, or any auxiliary unit officially connected with the military service. Such oath may be taken or affidavit made at any place either within or outside the United States of America, or any territory, possession or dependency thereof. The jurat to the oath and certificate to the affidavit need not state the place where the same is taken and shall require no seal to be affixed thereto. The certificate of the officer before whom the oath is taken or affidavit is made must state his or her rank, branch of military service, and identification number, and the certificate may be substantially in form and effect as follows:

IN THE MILITARY SERVICE OF THE UNITED STATES:

I,, being duly sworn on oath (affirmation), do swear (affirm) that I am a member of the military service of the United States (or of, an auxiliary to the military forces of the United States); that ***, etc.

.....
Taken, subscribed and sworn to before me,, a commissioned officer in the service of the United States, by, a member of the military service of the United States (or of, an auxiliary to the military forces of the United States), this the day of, 20.....

.....
(Signature of officer)

.....
(Rank) (Identification Number)

Any oath or affidavit heretofore taken or made by any person in the military service in substantial compliance with this section shall be valid.

**CHAPTER 39A. ELECTRONIC COMMERCE.
ARTICLE 1. UNIFORM ELECTRONIC TRANSACTIONS ACT.**

§39A-1-11. 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.
(2001, c. 120.)

WEST VIRGINIA CODE OF STATE RULES

TITLE 153 PROCEDURAL RULE SECRETARY OF STATE SERIES 22 RULES OF PROCEDURE FOR CONTESTED CASE HEARINGS DEALING WITH DENIALS AND REVOCATIONS OF NOTARY PUBLIC COMMISSIONS

§ 153-22-1. General.

1.1. Scope. -- These procedural rules establish the general procedures for conducting contested case hearings dealing with denials and revocations under the West Virginia Uniform Notary Act.

1.2. Authority. -- W. Va. Code § 29C-7-101.

1.3. Filing Date. -- January 9, 1990.

1.4. Effective Date. -- February 8, 1990.

§ 153-22-2. Definitions.

2.1. All definitions within West Virginia Code chapter twenty-nine-c are incorporated by reference.

2.2. "Secretary" shall mean the West Virginia Secretary of State.

§ 153-22-3. Notice of hearing.

3.1. Notice of hearing in all cases shall be given at least ten (10) days prior to the date of the hearing; stating (1) the time, day and location of the hearing; (2) a short plain statement of the matter asserted; (3) A statement of intention to appoint a hearing examiner if one is to be appointed pursuant to Section 8 of these rules.

§ 153-22-4. How hearings are to be conducted.

4.1. Any party shall have the right to be represented by an attorney-at-law, duly qualified to practice in the State of West Virginia, or to represent himself.

4.2. The Secretary of State's staff may be represented by the office of the Attorney General and can serve as the complainant.

4.3. The rules of evidence as applied in civil cases in the circuit courts of this State shall be followed as provided for in § 29A-5-2 of the West Virginia code of 1931.

4.4. When necessary to ascertain facts not reasonably susceptible to proof under said rules of evidence, evidence not admissible thereunder shall be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.

4.5. The Secretary shall be bound by the rules of privilege recognized by law.

4.6. Documentary evidence may be received in the form of copies of excerpts or by incorporation of reference.

4.7. Initially the complainant shall be given opportunity to present evidence, including testimony, papers, records, staff memoranda and documents in the possession

of the Secretary in support of its position.

4.8. Every party shall have the right of cross-examination of witnesses who testify, and following the conclusion of the agency's presentation, shall have the right to submit rebuttal evidence.

4.9. The complainant shall have the right to cross-examine witnesses providing rebuttal testimony.

4.10. Following the presentation of all the evidence, every party, shall have the right to offer argument, not to exceed a reasonable time limit as determined by the Secretary or the hearing examiner.

§ 153-22-5. Continuation and adjournment.

5.1. Hearings may be continued from one day to another or adjourned to a later date or a different place by announcement thereof at the hearing or by appropriate notice to all parties. A written motion for a continuance shall be filed at least five (5) days prior to the hearing date that is the subject of the continuance motion.

5.2. Each party shall be permitted only one (1) motion for a continuance related to any particular hearing.

5.3. Any continuance shall not exceed fifteen (15) days from the last scheduled date of the hearing.

§ 153-22-6. Transcription of reported testimony and evidence.

6.1. What reported — All testimony, evidence, arguments and rulings on the admissibility of testimony and evidence shall be reported by stenographic notes and characters or by mechanical means.

6.2. Request from any party — Upon the request to the Secretary from any party to the hearing, all reported materials shall be transcribed and a copy thereof furnished to such party at his expense.

6.3. Transcription in the event a hearing examiner is appointed — In all cases where a hearing examiner is appointed, all reported material shall be transcribed and forwarded to the Secretary. Any parties requesting a copy of a transcript prepared pursuant to this subsection shall be furnished a copy at their expense.

6.4. Responsibility for transcript — The Secretary shall have the responsibility for making arrangements for the transcription of the reported testimony and evidence. In the event transcription is required pursuant to this section it shall be accomplished with all dispatch.

6.5. Correction of error in transcript — upon the motion of the Secretary or any party assigning error or omission in any part of any transcript, the Secretary or his duly appointed hearing examiner shall settle all differences arising as to whether such transcript truly discloses what occurred at the hearing and shall direct that the transcript be corrected and revised in the respects designated, so as to make it conform to the whole truth.

§ 153-22-7. Submission of proposed finding of fact and conclusion of law, time for submission.

7.1. Any party may submit to the Secretary of duly appointed hearing examiner, proposed findings of fact and conclusions of law within thirty (30) days of the conclusion of a hearing or, in the event the proceedings of a hearing are transcribed, within twenty (20) days from the date the final transcript is available.

§ 153-22-8. Appointment of hearing examiner, function of hearing examiner.

8.1. The Secretary may in his discretion, appoint a hearing examiner who shall be empowered to administer oaths and affirmations, to examine witnesses under oath, to rule on evidentiary questions, to hold conferences for the settlement or simplification of issues by consent of the parties and to otherwise conduct hearings. The hearing examiner shall submit a recommended order along with the case record within thirty (30) days of the submission of all materials necessary to decide the case.

§ 153-22-9. Conferences; informal disposition of cases.

9.1. At any time prior to the hearing and thereafter, the Secretary or his duly appointed hearing examiner may hold conferences.

9.1.1. To dispose of procedural request or similar matters;

9.1.2. To simplify or settle issues by consent of the parties; or

9.1.3. To provide for the informal disposition of cases by stipulation, agreed settlement or consent order.

9.2. The Secretary, or his duly appointed hearing examiner may cause such conferences to be held on his own motion or by the request of a party.

§ 153-22-10. Orders; content.

10.1. Every final order entered by the Secretary following a hearing conducted pursuant to these rules, shall be made pursuant to the provisions of section three, article five, chapter twenty-nine-a, of the West Virginia Code of 1931, as amended. Such orders shall be entered within forty-five (45) days following the submission of all documents and materials necessary for the proper disposition of the case, including transcripts and proposed findings of fact and conclusions of law.

§ 153-22-11. Appeal.

11.1. An appeal from any final order or ruling entered in accordance with these regulations shall be in accordance with the provisions of section four, article five, chapter twenty-nine-a, of the West Virginia Code of 1931, as amended.

§ 153-22-12. Severability.

12.1. If any provision of these rules or the application thereof to any person or circumstance shall be held invalid, such invalidity thereof shall not affect the provision or application of these regulations which can be given effect without the invalid provision or application and to this end the provisions of these regulations are declared to be severable.

SERIES 45. STANDARDS AND GUIDELINES FOR ELECTRONIC NOTARIZATION

§153-45-1. General.

1.1. Scope. -- This rule defines the requirements for electronic notarization of electronic documents.

1.2. Authority. -- W. Va. Code § 39-4-25.

1.3. Filing Date. -- April 30, 2015

1.4. Effective Date. -- April 30, 2015

§153-45-2. Definitions.

2.1. “Capable of independent verification” means that any interested person may confirm the validity of an electronic notarial act and an electronic notary public’s identity and authority through a publicly accessible system.

2.2. “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

2.3. “Electronic document” means information that is created, generated, sent, communicated, received, or stored by electronic means.

2.4. “Electronic journal of notarial acts” and “electronic journal” mean a chronological electronic record of notarizations that is maintained by the notary public who performed the same notarizations.

2.5. “Electronic notarial act” and “electronic notarization” mean an official act involving an electronic document that is performed in compliance with this Rule by an electronic notary public as a security procedure.

2.6. “Electronic notarial certificate” means the part of, or attachment to, a notarized electronic document that, in the performance of an electronic notarization, is completed by the electronic notary public, bears the notary’s registered electronic signature and seal, and states the date, venue, and facts attested to or certified by the notary in the particular electronic notarization.

2.7. “Electronic notary public” and “electronic notary” mean a notary public who has registered with the Secretary of State the capability to perform electronic notarial acts.

2.8. “Electronic notary seal” and “electronic seal” mean information within a notarized electronic document that includes the electronic notary’s name, title, jurisdiction, commission expiration date, and other information required by subdivision 11.2.c of this rule.

2.9. “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 document.

2.10. “Registered electronic notary seal” means an electronic notary seal produced by a notary in the performance of an electronic notarial act by a means that was registered with the Secretary of State.

2.11. “Registered electronic signature” means an electronic signature produced by a notary in the performance of an electronic notarial act by a means that was registered with the Secretary of State.

2.12. “Security procedure” means a procedure employed for the purpose of verifying that an electronic signature, document, or performance is that of a specific person or for detecting changes or errors in the information in an electronic document. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback, or other acknowledgment procedures.

§153-45-3. Registration with the Secretary of State.

3.1. A notary public shall register the capability to perform electronic notarial acts with the Secretary of State before notarizing electronically.

3.2. Upon recommissioning, a notary public shall again register as an electronic notary with the Secretary of State before notarizing electronically.

3.3. A person may apply or reapply for a notary commission and register or reregister to perform electronic notarial acts at the same time.

§153-45-4. Term of Registration of Electronic Notary.

4.1. The term of registration of an electronic notary public begins on the registration starting date set by the Secretary of State and continues as long as the notary's commission remains in effect or until registration is terminated under sections 24 or 26 of this rule.

§153-45-5. Electronic Notarization Authorization Form.

5.1. To register the capability to perform electronic notarial acts, a notary public shall sign and submit to the Secretary of State a form prescribed by the Secretary of State which includes the following information:

5.1.a. A description of each separate means that will be used to produce electronic signatures and electronic notary seals;

5.1.b. The names of any licensing authorities or companies issuing the means for producing the electronic signatures and seals, the source of each license, and the starting and expiration dates of each pertinent certificate, software, or process;

5.1.c. An explanation of any revocation, annulment, or other premature termination of any certificate, software, or process ever issued or registered to the applicant to produce an electronic signature or seal; and

5.1.d. A declaration that the notary public will use the means issued or authorized for issuance by the Secretary of State for producing an electronic notary seal.

§153-45-6. Registration of Multiple Means.

6.1. Under section five of this rule, a notary public may register at the same, or at different times, one or more respective means for producing electronic signatures and electronic notary seals, or single elements combining the required features of both, consistent with the requirements cited elsewhere in this rule.

§153-45-7. Material Misstatement or Omission of Fact.

7.1. The Secretary of State shall deny registration to any applicant submitting an electronic registration form that contains a material misstatement or omission of fact.

§153-45-8. Authorized Electronic Notarial Acts.

8.1. The following notarial acts may be performed electronically:

8.1.a. Taking an acknowledgment;

8.1.b. Administering an oath or affirmation;

8.1.c. Witnessing or attesting a signature;

8.1.d. Certifying or attesting a copy; and

8.1.e. Noting a protest of a negotiable instrument.

§153-45-9. Requirements for Electronic Notarial Acts.

9.1. An electronic notary public shall perform an electronic notarization only if the individual seeking an acknowledgment:

9.1.a. Is in the presence of the notary at the time of notarization;

9.1.b. Is personally known to the notary or identified by the notary through satisfactory evidence as prescribed in W.Va. State Code 39-4-7;

9.2. An electronic notary public may refuse to perform a notarial act if the officer is not satisfied that:

9.2.a. The individual executing the record is competent or has the capacity to

execute the record; or

9.2.b. The individual's signature is knowingly or voluntarily made.

§153-45-10. All Notary Rules Apply.

10.1. In performing electronic notarial acts, an electronic notary shall adhere to all applicable rules governing notarial acts provided in this rule, W.Va. 153 CSR 46, and W.Va State Code 39-1-1, *et seq.*

§153-45-11. Completion of Electronic Notarial Certificate.

11.1. In performing an electronic notarial act, the notary shall properly complete an electronic notarial certificate.

11.2. A proper electronic notarial certificate must contain:

11.2.a. Completed wording appropriate to the particular electronic notarial act, as prescribed in subsection 11.3 of this rule;

11.2.b. A registered electronic signature; and

11.2.c. A registered electronic notary seal, which must include:

11.2.c.1. The words "Official Seal;"

11.2.c.2. The words "Electronic Notary Public";

11.2.c.3. The words "State of West Virginia;"

11.2.c.4. The notary public's name as it is spelled on the commissioning document;

11.2.c.5. The notary public's address as it is listed on the commissioning document;

11.2.c.6. The commission expiration date of the electronic notary;

11.2.c.7. An image of the West Virginia State Seal; and

11.2.c.8. The commission or registration number of the electronic notary.

11.3. The wording of an electronic notarial certificate must be in a form that:

11.3.a. Is set forth in W.Va. State Code §39-4-16;

11.3.b. Is otherwise prescribed by the law of this state;

11.3.c. Is prescribed by a law, regulation, or custom of another jurisdiction, provided it does not require actions by the electronic notary that are unauthorized by this state; or

11.3.d. Describes the actions of the electronic notary in such a manner as to meet the requirements of the particular notarial act, as defined in section 2.5 of this rule.

11.4. A notarial certificate must be worded and completed using only letters, characters, and a language that are read, written, and understood by the electronic notary.

§153-45-12. Electronic Signature and Seal Attributed to Notary.

12.1. In notarizing an electronic document, the notary shall attach to, or logically associate with, the electronic notarial certificate a registered electronic signature and a registered electronic notary seal, or a registered single element in conformance with section 6 of this rule, in such a manner that the signature and the seal, or the single element, are attributed to the notary as named on the commission.

§153-45-13. Attributes of Registered Electronic Signature.

13.1. A registered electronic signature must be:

13.1.a. Unique to the electronic notary public;

13.1.b. Capable of independent verification;

13.1.c. Attached to or logically associated with an electronic notarial certificate in such a manner that any subsequent alteration of the certificate or underlying electronic document prominently displays evidence of the alteration; and

13.1.d. Attached or logically associated by a means under the electronic notary's sole control.

§153-45-14. Signature of Registered Electronic Notary Seal.

14.1. At all times the means for producing registered electronic notary seals, or registered single elements as described in section 6 of this rule, must be kept under the sole control of the electronic notary.

14.2. If the means for producing registered electronic notary seals, or registered single elements as described in section 6 of this rule are accessed by a username and password, the electronic notary must maintain sole control of the access information.

§153-45-15. Employer Shall Not Use or Control Means.

15.1. An employer of an electronic notary shall not use or control the means for producing registered electronic signatures and notary seals, or registered single elements combining the required features of both, nor upon termination of a notary's employment, retain any software, coding, disk, certificate, card, token, or program that is intended exclusively to produce a registered electronic signature, notary seal, or combined single element, whether or not the employer financially supported the employee's activities as a notary.

§153-45-16. Non-Notarial Use.

16.1. A registered electronic signature may be used by the electronic notary for lawful purposes other than performing electronic notarizations, provided that neither the title "notary" nor any other indication of status as a notarial officer is part of the signature.

16.2. Neither a registered electronic notary seal nor a combined single element containing the seal may be used by the electronic notary for any purpose other than performing lawful electronic notarizations.

§153-45-17. Maintaining Journal of Electronic Notarial Acts.

17.1. An electronic notary public may keep, maintain, protect, and provide for lawful inspection a chronological journal of notarial acts that is either:

17.1.a. A permanently bound book with numbered pages; or

17.1.b. An electronic journal of notarial acts as described in section 18 of this rule.

17.2. An electronic notary may keep a record of electronic and nonelectronic notarial acts in the same journal.

§153-45-18. Attributes of Electronic Journal.

18.1. An electronic journal of notarial acts shall:

18.1.a. Allow journal entries to be made, viewed, printed out, and copied only after access is obtained by a procedure that uses a username and a password;

18.1.b. Not allow a journal entry to be deleted or altered in content or sequence by the notary or any other person after a record of the notarization is entered and stored;

18.1.c. Have a backup system in place to provide a duplicate record of notarial acts as a precaution in the event of loss of the original record;

§153-45-19. Form of Evidence of Authority of Electronic Notarial Act.

19.1. On a notarized electronic document transmitted to another country or nation, electronic evidence of the authenticity of the registered electronic signature and seal of an electronic notary public of this state, if required, must be in the form of an electronic certificate of authority signed by the Secretary of State in conformance with any current and pertinent international treaties, agreements, and conventions subscribed by the government of the United States.

19.2. The electronic certificate of authority described in subsection 19.1 must be attached to or logically associated with the electronically notarized document in such a manner that any subsequent alteration of the notarized document, or removal or alteration of the electronic certificate of authority, produces evidence of the change.

§153-45-20. Certificate of Authority for Electronic Notarial Act.

20.1. An electronic certificate of authority evidencing the authenticity of the registered electronic signature and seal of an electronic notary public of this state must be in substantially the following form:

Certificate of Authority for Electronic Notarial Act

I, (name and title of commissioning official), certify that (name of electronic notary public), the person named as Electronic Notary Public in the attached, associated, or accompanying electronic document, was registered as an Electronic Notary Public for the State of West Virginia and authorized to act as such at the time the document was electronically notarized. I also certify that the document bears no evidence of illegal or fraudulent alteration.

To verify this Certificate of Authority for an Electronic Notarial Act, I have included herewith my electronic seal and signature this ____ day of _____, 20____.

(Electronic seal and signature of Secretary of State)

§153-45-21. Change of E-Mail Address.

21.1. Within 5 business days after the change of an electronic notary public's email address, the notary shall electronically transmit to the Secretary of State a notice of the change. The email must include the notary public's notary identification number issued by the Secretary of State.

§153-45-22. Change of Registration Data.

22.1. Any change or addition to the data on the electronic registration form described in section five, must be reported within 10 days to the Secretary of State.

§153-45-23. Change of Means of Production.

23.1. Upon becoming aware that the status, functionality, or validity of the means for producing a registered electronic signature, notary seal, or single element combining the signature and seal, has changed, expired, terminated, or become compromised, the notary shall:

23.1.a. Immediately notify the Secretary of State;

23.1.b. Cease producing seals or signatures in electronic notarizations using that means;

23.1.c. Perform electronic notarizations only with a currently registered means or another means that has been registered within 30 days; and

23.1.d. Dispose of any software, coding, disk, certificate, card, token, or program that has been rendered defunct, in the manner described in subsection 25.1 of this rule.

23.2. Pursuant to subsection one of this section, the Secretary of State shall immediately suspend the electronic status of a notary who has no other currently registered means for producing electronic signatures or notary seals, and if such means is not registered within 30 days, electronic status must be terminated.

§153-45-24. Termination of Electronic Notary Registration.

24.1. Any revocation, resignation, expiration, or other termination of the commission of a notary public immediately terminates any existing registration as an electronic notary.

24.2. A notary's decision to terminate registration as an electronic notary shall not automatically terminate the underlying commission of the notary.

24.3. A notary who terminates registration as an electronic notary shall notify the Secretary of State in writing and dispose of any pertinent software, coding, disk, certificate, card, token, or program as described in section 25 of this rule.

§153-45-25. Disposition of Software and Hardware.

25.1. When the commission of an electronic notary public expires or is resigned or revoked, when registration as an electronic notary terminates, or when an electronic notary dies, the notary or the notary's duly authorized representative within 30 business days shall permanently erase or expunge the software, coding, disk, certificate, card, token, or program that is intended exclusively to produce registered electronic notary seals, registered single elements combining the required features of an electronic signature and notary seal, or registered electronic signatures that indicate status as a notary.

§153-45-26. Causes for Denial, Conditioning, Suspension, or Termination of Registration.

26.1. The Secretary of State shall deny, condition, suspend, or terminate an electronic notary public's registration for any of the following reasons:

26.1.a. Submission of an electronic registration form containing material misstatement or omission of fact;

26.1.b. Failure to obtain or maintain the capability to perform electronic notarial acts, except as allowed in section 24 of this rule; or

26.1.c. The electronic notary's performance of official misconduct.

26.2. If the Secretary of State denies a registration for electronic notarization, the individual making application may request a hearing according to the provisions of W.Va. 153 CSR 47 to contest the decision of the Secretary of State.

26.2. Prior to conditioning, suspending, or terminating an electronic notary's registration, the Secretary of State shall provide notice to the electronic notary in the form of a short, plain statement of the basis for action, the date, time, and place of a hearing on the matter, and the name of the hearing examiner. The procedures for any hearing regarding the conditioning, suspension or termination of an electronic notary's registration must be conducted according to the procedures set forth in W.Va. 153 CSR 47.

26.3. Neither resignation nor expiration of a notary commission or of an electronic notary registration precludes or terminates an investigation by the Secretary of State into

the electronic notary's conduct. The investigation may be pursued to a conclusion, whereupon it must be made a matter of public record whether or not the finding would have been grounds for conditioning, suspension, or termination of the

SERIES 46. NOTARIES PUBLIC

§153-46-1 -- §153-46-4: REPEALED.

SERIES 50. SCHEDULE OF FEES

§153-50-1. General.

Scope. --This schedule establishes the fee to be charged by the Secretary of State for an application for commission as a notary public.

Authority. -- W. V. Code §§ 39-4-20 (a) and 39-4-25 (a) (7).

Filing Date -- April 30, 2015

Effective Date -- April 30, 2015

§153-50-2. Schedule of Fees.

2.1 Application Fee \$52.00

2.2 Fees shall be payable to the West Virginia Secretary of State by check, money order, major credit card, or certified check.