

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 56th Legislature (2017)

4 HOUSE BILL 1366

 By: Hall

7 AS INTRODUCED

8 An Act relating to notarial acts and affirmations;
9 amending 16 O.S. 2011, Sections 26, 27a, 33 and 35,
10 which relate to conveyances; providing for
11 verification under oath or affirmation for certain
12 documents; providing for electronic notarial acts;
13 providing for validity of certain records or
14 instruments; providing application of law; requiring
15 registration prior to performing electronic notarial
16 acts; requiring conformation with certain standards;
17 providing procedures and requirements for
18 registration and certification; amending 49 O.S.
19 2011, Sections 2, as amended by Section 2, Chapter 9,
20 O.S.L. 2015, 5, 6 and 6.1 (49 O.S. Supp. 2016,
21 Section 2), which relate to notaries public;
22 modifying required bond; modifying requirements
23 pertaining to notarial seals; modifying fee that may
24 be charged for notarial acts; authorizing fee for
 electronic notarial acts and other authorized acts;
 requiring notary public to display list of fees;
 authorizing public officials to collect fees for
 performance of notarial acts; providing for
 compensation outside the scope of notarial acts;
 providing for fee arrangements between notary public
 and employer or other private entity; authorizing
 software platform providers to limit notarial
 services; authorizing notary public to charge fees
 for providing certain copies; modifying authority of
 notaries public; providing requirement for notaries
 public; requiring the Secretary of State to maintain
 an electronic database of notaries public; amending
 49 O.S. 2011, Sections 112, 117, 118, 119 and 120,
 which relate to the Uniform Law on Notarial Acts;
 modifying definitions; modifying means of providing

1 certain evidence; modifying requirements for
2 certificate for notarial acts; clarifying statutory
3 references; providing for validity of electronic
4 notarial acts performed before a certain date;
5 providing for relation of the Uniform Law on Notarial
6 Acts to the Electronic Signatures in Global and
7 National Commerce Act; authorizing any notarial
8 officer to use tamper-evident technologies and to
9 refuse to use technologies not selected by the
10 notarial officer; authorizing notaries public to use
11 two-way audio-video communication; requiring
12 notification to the Secretary of State; providing
13 requirements and limitations for audio-visual
14 communication; authorizing the Secretary of State to
15 promulgate rules pertaining to audio-video
16 communication; requiring maintenance of certain
17 recordings for specified period of time; requiring
18 certain information to be included in recordings;
19 providing for validity of notarial acts; authorizing
20 the Secretary of State to promulgate rules regulating
21 notaries public and notarial acts; providing for
22 codification; providing for recodification; and
23 providing an effective date.
24

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 16 O.S. 2011, Section 26, is
amended to read as follows:

Section 26. No deed, mortgage or other instrument affecting the
real estate shall be received for record or recorded unless executed
and acknowledged or verified under oath or affirmation in
substantial compliance with this chapter; and the recording of any
such instrument not so executed and acknowledged shall not be
effective for any purpose.

1 SECTION 2. AMENDATORY 16 O.S. 2011, Section 27a, is
2 amended to read as follows:

3 Section 27a. A. When any instrument shall have been recorded
4 in the office of the county clerk in the proper county for the
5 period of five (5) years, and the instrument contains any of the
6 following defects:

7 1. It has not been signed by the proper representative of a
8 legal entity;

9 2. The representative is not authorized to execute the
10 instrument on behalf of the legal entity;

11 3. A power of attorney has not been filed of record for an
12 attorney in fact executing the instrument;

13 4. The seal of the legal entity has not been impressed on such
14 instrument or the record does not show such seal;

15 5. The instrument is not acknowledged;

16 6. A deed or conveyance does not bear endorsement of approval
17 by the appropriate governmental planning authority having
18 jurisdiction; or

19 7. Any defect in the execution, acknowledgment, verification
20 under oath or affirmation, recording or certificate of recording the
21 same,

22 such instrument shall, from and after the expiration of five (5)
23 years from the filing thereof for record, be valid as though such
24 instrument had, in the first instance, been in all respects duly

1 executed, acknowledged, approved by the appropriate planning
2 authority having jurisdiction, and certified. Such instrument or
3 the record thereof or a duly-authenticated copy thereof shall be
4 competent evidence without requiring the original to be produced or
5 accounted for to the same extent that written instruments, duly
6 executed and acknowledged, or the record thereof, are competent.
7 However, nothing herein contained shall be construed to affect any
8 rights acquired by grantees, assignees or encumbrancers subsequent
9 to the filing of such instrument for record and prior to the
10 expiration of five (5) years from the filing of such instrument for
11 record.

12 B. This section shall apply to instruments recorded before or
13 after November 1, 1995. However, with respect to those recorded
14 before such date, the five-year period specified above shall not
15 expire until one (1) year after the effective date of this act.

16 SECTION 3. AMENDATORY 16 O.S. 2011, Section 33, is
17 amended to read as follows:

18 Section 33. An acknowledgment or verification under oath or
19 affirmation by individuals of any instrument affecting real estate
20 shall be in substantially a form as provided for in the Uniform Law
21 on Notarial Acts or in substantially the following form:

22 State of Oklahoma,)

23) ss.

24 _____ County.)

1 Before me, ____ in and for this state, on this ____ day of ____,
2 _____ personally appeared _____ to me known to be the
3 identical person(s) who executed the within and foregoing
4 instrument, and acknowledged to me that ____ executed the same as
5 ____ free and voluntary act and deed for the uses and purposes
6 therein set forth.

7 SECTION 4. AMENDATORY 16 O.S. 2011, Section 35, is
8 amended to read as follows:

9 Section 35. Every acknowledgment or verification under oath or
10 affirmation must be under seal of the officer taking the same; and
11 when taken in this state, it may be taken before any notary public,
12 county clerk, clerk of the district court, or district judge; and
13 when taken elsewhere in the United States, or United States
14 possessions, or Canada (including Newfoundland), it may be taken
15 before any notary public, clerk of a court of record, or
16 commissioner of deeds duly appointed by the Governor of the state
17 for the county, state or territory where the same is taken; and when
18 taken in any other foreign country, it may be taken before any court
19 of record or clerk of such court, or before any Consul of the United
20 States; ~~provided, that acknowledgments relating to military~~
21 ~~business of the state may be taken before an officer in charge of~~
22 ~~any authorized to convene a summary Court-Martial appointed under~~
23 ~~the provisions of Section 157, Title 44, Oklahoma Statutes, 1941, a~~
24 ~~certified copy of whose appointment is placed of record in the~~

1 ~~office of the Secretary of State by the Adjutant General as provided~~
2 ~~in Section 3243 of Title 44 of the Oklahoma Statutes.~~

3 SECTION 5. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 39b of Title 16, unless there is
5 created a duplication in numbering, reads as follows:

6 A. If an electronic record or instrument that is defectively
7 electronically notarized is otherwise validly recorded, the
8 electronic record or instrument shall be deemed to be validly
9 recorded for the purposes of this title and in full compliance with
10 all statutory requirements set forth in Sections 113 and 118 of
11 Title 49 of the Oklahoma Statutes.

12 B. Subsection A of this section shall apply to all instruments
13 of record on or after July 1, 2017. However, if the relative
14 priorities of conflicting claims to real property were established
15 at a time before July 1, 2017, the law applicable to the claims at
16 such time shall determine their priority.

17 SECTION 6. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1.2 of Title 49, unless there is
19 created a duplication in numbering, reads as follows:

20 A. Before a notary public performs an electronic notarial act,
21 a notary public shall successfully register with the Secretary of
22 State and provide a general description of the technology the notary
23 public will be using or intends to use. If the Secretary of State
24 has established standards for approval of technology pursuant to

1 Section 23 of this act, the technology must conform to the
2 standards. If the technology conforms to the standards, the
3 Secretary of State shall approve the use of the technology.

4 B. A notary public shall register with the Secretary of State
5 for each commission term before performing electronic notarial acts.

6 C. An individual may apply for a notary public commission and
7 register to perform electronic notarial acts at the same time.

8 D. An individual may elect not to perform electronic notarial
9 acts.

10 E. Unless revoked pursuant to Section 12 of Title 49 of the
11 Oklahoma Statutes, the term of registration to perform electronic
12 notarial acts shall begin on the registration starting date set by
13 the Secretary of State and shall continue as long as the notary
14 public's current commission remains valid.

15 F. A notary public registering to perform electronic notarial
16 acts shall submit to the Secretary of State an application in a
17 format prescribed by the Secretary of State which includes:

18 1. Disclosure of any and all license or commission revocations
19 or other disciplinary actions against the registrant;

20 2. Evidence that the surety bond prescribed by Section 2 of
21 Title 49 of the Oklahoma Statutes has been issued; and

22 3. Certification of compliance to the Secretary of State with
23 the electronic notary performance standards developed in accordance
24 with Section 23 of this act.

1 G. Upon the applicant's fulfillment of the requirements for
2 registration under this section, the Secretary of State shall
3 approve the registration and issue to the applicant a unique
4 registration number.

5 H. Once the application is approved, the individual shall
6 submit an electronic signature sample to the Secretary of State.

7 SECTION 7. AMENDATORY 49 O.S. 2011, Section 2, as
8 amended by Section 2, Chapter 9, O.S.L. 2015 (49 O.S. Supp. 2016,
9 Section 2), is amended to read as follows:

10 Section 2. A. Before entering upon the duties of his or her
11 office and not more than sixty (60) days after issuance of a notary
12 commission, every notary public so appointed and commissioned shall
13 file in the office of the Secretary of State, the notary's oath of
14 office, the notary's loyalty oath, the notary's official signature,
15 an impression of the notary's official seal, and a good and
16 sufficient bond to the State of Oklahoma, in the sum of ~~One Thousand~~
17 ~~Dollars (\$1,000.00)~~ Ten Thousand Dollars (\$10,000.00), to be
18 approved by the Secretary of State, conditioned for the faithful
19 performance of the duties of the notary's office.

20 B. The bond required by subsection A of this section shall be
21 signed by:

22 1. An insurance agent licensed by the State of Oklahoma;

23 2. An attorney-in-fact on behalf of an insurance company with a
24 power of attorney attached; or

1 3. One or more individual sureties who are property owners in
2 the county of residence of the notary, or if a nonresident, the
3 county of employment of the notary.

4 C. The bond required by subsection A of this section shall be
5 issued for a term that commences on the bond's effective date and
6 terminates on the commission's expiration date. Upon the filing of
7 his or her bond with the Secretary of State, every notary public
8 shall pay to the Secretary of State the sum of Ten Dollars (\$10.00)
9 to be deposited to the credit of the Revolving Fund for the Office
10 of the Secretary of State.

11 D. A notary public shall not perform any notarial act until his
12 or her bond, official seal, oath of office and loyalty oath, as
13 required by subsection A of this section, has been received and
14 approved by the Secretary of State.

15 SECTION 8. AMENDATORY 49 O.S. 2011, Section 5, is
16 amended to read as follows:

17 Section 5. A. Every notary shall obtain a notarial seal
18 containing the words "State of Oklahoma" and "Notary Public" and the
19 notary's name. This seal may be affixed by either a metal seal
20 device which leaves an embossed impression or a rubber ~~stamp~~
21 stamping device used in conjunction with a stamp pad and ink. Each
22 notary shall authenticate all official acts, attestations, and
23 instruments with this seal; and shall add to the notary's official
24 signature, the commission number of the notary and the date of

1 expiration of the commission of the notary. Failure to add the
2 commission number or the date of expiration of the commission shall
3 not affect the recordability of the instrument or the notice given
4 by such recording. This date and commission number may be a part of
5 the stamp or seal. If any notary public shall neglect or refuse to
6 attach to the notary's official signature the date of expiration of
7 the notary's commission, the notary shall be deemed guilty of a
8 misdemeanor, and upon conviction thereof shall be fined in any sum
9 not exceeding Fifty Dollars (\$50.00).

10 B. The maximum fee a notary may charge and collect for each
11 notarial act is ~~Five Dollars (\$5.00)~~ Ten Dollars (\$10.00), except no
12 fee shall be charged for the notarization of an official absentee
13 ballot affidavit. A notary public may charge a fee not to exceed
14 Twenty-five Dollars (\$25.00) for each notarial act when performed as
15 an electronic notarial act, including an electronic notarial act
16 performed by means of audio-video communication under Section 21 of
17 this act. Fees for other authorized notarial acts relating to
18 protests and the commercial usage shall be negotiable.

19 C. If a notary public charges fees under this section for
20 performing notarial acts, the notary public shall display in
21 advance, in English, a list of the fees the notary public will
22 charge.

1 D. A public official may collect the fees described in this
2 section for notarial acts performed in the course of employment by
3 notaries public who are employed by the public body.

4 E. Compensation for business or other services provided by a
5 notary public which do not constitute performance of notarial acts
6 as set forth in subsection A of this section, or which do not
7 constitute compliance with the recordkeeping and other requirements
8 of this title, are subject to private agreement and are not governed
9 by this section.

10 F. A notary public who is either an employee of or an
11 independent contractor to a private entity, including an entity
12 which facilitates the notary public's provisioning of notarial
13 services to the public, may enter into an agreement with the entity
14 under which notarial fees owed to the notary public under this
15 section may be collected by and accrue to the entity, and that
16 provides for allocation of such fees between the entity and the
17 notary public.

18 G. A software platform provider that has entered into a private
19 agreement with a notary pursuant to subsection F of this section may
20 limit, during the notary's employment work hours or, if the notary
21 is an independent contractor, during the delivery of agreed
22 services, the providing of any electronic notarial services by the
23 notary solely to transactions directly approved by the software
24 platform provider.

1 H. A notary public may charge a reasonable fee to recover any
2 cost of providing a copy of an entry in an electronic journal
3 pursuant to Section 12 of this act or of a recording of an audio-
4 video communication session pursuant to Section 21 of this act.

5 SECTION 9. AMENDATORY 49 O.S. 2011, Section 6, is
6 amended to read as follows:

7 Section 6. A. Notaries public shall have authority within any
8 county in this state to make the proof and acknowledgement of deeds
9 and other instruments of writing required to be proved or
10 acknowledged; to administer oaths of affirmations; to take a
11 verification upon oath or affirmation to witness or attest a
12 signature; to certify or attest a copy; to demand acceptance or
13 payment of foreign or inland bills of exchange and promissory notes,
14 and protest the same for nonacceptance or nonpayment, as the same
15 may require~~7~~; and to exercise such other powers and duties as by law
16 of nations and commercial usage may be performed by notaries public.
17 A notary may not notarize his or her own signature.

18 B. No notary public, except those who are licensed attorneys or
19 otherwise authorized by law to represent persons on immigration or
20 citizenship matters, shall hold himself or herself out as having
21 expertise in providing legal advice on any proceeding, filing or
22 action affecting the immigration or citizenship status of another
23 person. For purposes of this section, "legal advice" means any
24 direct or indirect advice or counsel related to provisions of the

1 Immigration and Nationality Act including, but not limited to,
2 assistance in the selection of immigration forms required by the
3 Immigration and Nationality Act, advice or council related to
4 responses to information required on forms by the Immigration and
5 Nationality Act, or acting in a representative capacity in an
6 attempt to redress wrongs or secure benefits provided by the
7 Immigration and Nationality Act. Any notary public who provides
8 nonlegal assistance on any proceeding, filing or action affecting
9 the immigration or citizenship status of another person shall give
10 the following notice to that person verbally and in writing: "I am
11 not a licensed attorney or representative of any government agency
12 with authority over immigration or citizenship and, therefore,
13 cannot offer legal advice about immigration or any other legal
14 matters." If the notary public operates a business or advertises
15 in any language other than English, such notice shall be given in
16 both English and in the other language or languages. Literal
17 translation of the phrase "notary public" into Spanish, hereby
18 defined as "notario publico" or "notario", is prohibited. For
19 purposes of this section, "literal translation" of a word or phrase
20 from one language to another means the translation of a word or
21 phrase without regard to the true meaning of the word or phrase in
22 the language which is being translated.

23 SECTION 10. AMENDATORY 49 O.S. 2011, Section 6.1, is
24 amended to read as follows:

1 Section 6.1 Any individual convicted of violating subsection B
2 of Section 6 of ~~Title 49 of the Oklahoma Statutes~~ this title shall
3 be guilty of a misdemeanor and shall be subject to a fine not to
4 exceed One Thousand Dollars (\$1,000.00). Upon receipt of a final
5 judgment against a notary public for a violation of subsection B of
6 Section 6 of ~~Title 49 of the Oklahoma Statutes~~ this title from a
7 district court of this state or its equivalent from a foreign
8 jurisdiction, the Secretary of State shall revoke the appointment of
9 the notary for a period of eight (8) years.

10 SECTION 11. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 13 of Title 49, unless there is
12 created a duplication in numbering, reads as follows:

13 A notary public shall:

- 14 1. Register each electronic notarial act in an electronic
15 journal;
- 16 2. Maintain and protect the electronic journal under the notary
17 public's sole control; and
- 18 3. Provide for lawful inspection and copying of the electronic
19 journal.

20 SECTION 12. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 14 of Title 49, unless there is
22 created a duplication in numbering, reads as follows:

23 The Secretary of State shall maintain an electronic database of
24 notaries public:

1 1. Through which a person may verify the authority of a notary
2 public to perform notarial acts; and

3 2. Which indicates whether a notary public has registered with
4 the Secretary of State for authorization to perform electronic
5 notarial acts and is commissioned as a notary.

6 SECTION 13. AMENDATORY 49 O.S. 2011, Section 112, is
7 amended to read as follows:

8 Section 112. As used in the Uniform Law on Notarial Acts:

9 1. ~~"Notarial acts" means any act that a notary public of this~~
10 ~~state is authorized to perform, and includes taking an~~
11 ~~acknowledgment, administering an oath or affirmation, taking a~~
12 ~~verification upon oath or affirmation, witnessing or attesting a~~
13 ~~signature, certifying or attesting a copy, and noting a protest of a~~
14 ~~negotiable instrument.~~

15 2. "Acknowledgment" means a declaration by a person that the
16 person has executed an instrument for the purposes stated therein
17 and, if the instrument is executed in a representative capacity,
18 that the person signed the instrument with proper authority and
19 executed it as the act of the person or entity represented and
20 identified therein;i

21 3. ~~"Verification upon oath or affirmation" means a declaration~~
22 ~~that a statement is true made by a person upon oath or affirmation.~~

23 4. 2. "Appearance in person" and "appears before" mean presence
24 by a principal before an authorized notarial officer by:

1 a. being in the same physical location as another
2 individual and close enough to see, hear, communicate
3 with and exchange tangible identification credentials
4 with that individual, or

5 b. being able to see, hear and communicate with another
6 individual by means of audio-video communication;

7 3. "Audio-video communication" means being able to see, hear
8 and communicate with another individual in real time using
9 electronic means;

10 4. "Credential" means a tangible record evidencing an
11 individual's identity;

12 5. "Dynamic knowledge-based authentication assessment" means an
13 identity assessment that is based on a set of questions formulated
14 from public or private data sources for which the principal has not
15 provided a prior answer;

16 6. "Electronic" means relating to technology having electrical,
17 digital, magnetic, wireless, optical, electromagnetic or similar
18 capabilities;

19 7. "Electronic notarial act" and "electronic notarization" mean
20 a notarial act or notarization that involves an electronic record;

21 8. "Electronic notarial certificate" means the part of, or
22 attachment to, an electronic record that is completed by a notarial
23 officer, bears that notarial officer's electronic signature and, if
24

1 applicable, official seal and states the facts attested to by the
2 notarial officer in an electronic notarization;

3 9. "Electronic record" means a record created, generated, sent,
4 communicated, received or stored by electronic means;

5 10. "Electronic signature" means an electronic symbol, sound or
6 process attached to or logically associated with a record and
7 executed or adopted by an individual with the intent to sign the
8 record;

9 11. "In a representative capacity" means:

10 a. for and on behalf of a corporation, partnership,
11 trust, or other entity, as an authorized officer,
12 agent, partner, trustee, or other representative~~+~~,

13 b. as a public officer, personal representative,
14 guardian, or other representative, in the capacity
15 recited in the instrument~~+~~,

16 c. as an attorney-in-fact for a principal~~+~~, or

17 d. in any other capacity as an authorized representative
18 of another~~+~~;

19 ~~5-~~ 12. "Notarial acts" means any act that a notary public of
20 this state is authorized to perform with respect to a tangible
21 record, and includes taking an acknowledgment, administering an oath
22 or affirmation, taking a verification upon oath or affirmation,
23 witnessing or attesting a signature, certifying or attesting a copy
24 and noting a protest of a negotiable instrument;

1 13. "Notarial officer" means a notary public or any other
2 person authorized to perform notarial acts in the place in which the
3 act is performed;

4 14. "Official seal" means a physical image affixed to or
5 embossed on a tangible record or an electronic image attached to or
6 logically associated with an electronic record;

7 15. "Person" means an individual, corporation, business trust,
8 statutory trust, estate, trust, partnership, limited liability
9 company, association, joint venture, public corporation, government
10 or governmental subdivision, agency or instrumentality, or any other
11 legal or commercial entity;

12 16. "Principal" means:

- 13 a. an individual whose signature is notarized, or
14 b. an individual, other than a witness required for the
15 electronic notarization, taking an oath or affirmation
16 from the notary public;

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

20 18. "Sign" means, with present intent to authenticate or adopt
21 a record:

- 22 a. to execute or adopt a tangible symbol, or
23 b. to attach to or logically associate with the record an
24 electronic symbol, sound or process;

1 19. "Signature" means a tangible symbol or an electronic
2 signature that evidences the signing of a record;

3 20. "Sole control" means at all times being in the direct
4 physical custody of the notary public or safeguarded by the notary
5 with a password or other secure means of authentication;

6 21. "Stamping device" means:

7 a. a physical device capable of affixing to or embossing
8 on a tangible record an official seal, or

9 b. an electronic device or process capable of attaching
10 to or logically associating an official seal with an
11 electronic record. The notarial official seal,
12 whether applied to the record physically or
13 electronically, serves as and is considered to be a
14 seal for the purposes of evidentiary presumptions as
15 well as admitting a document in court;

16 22. "State" means a state of the United States, the District of
17 Columbia, Puerto Rico, the United States Virgin Islands or any
18 territory or insular possession subject to the jurisdiction of the
19 United States;

20 23. "Technology" means a set of applications, programs,
21 hardware, software or technologies designed to enable a notarial
22 officer to perform electronic notarizations; and

23 24. "Verification upon oath or affirmation" means a declaration
24 that a statement is true made by a person upon oath or affirmation.

1 SECTION 14. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 113.1 of Title 49, unless there
3 is created a duplication in numbering, reads as follows:

4 If a notarial act relates to a statement made in or a signature
5 executed on a record, the individual making the statement or
6 executing the signature shall appear personally before the notarial
7 officer either by appearing in the notary's physical presence or, in
8 the case of an electronic notarization, by appearing either in the
9 notary's physical presence or by means of audio-video communication
10 as authorized in Section 21 of this act.

11 SECTION 15. AMENDATORY 49 O.S. 2011, Section 117, is
12 amended to read as follows:

13 Section 117. A. A notarial act has the same effect pursuant to
14 the laws of this state as if performed by a notarial officer of this
15 state if performed within the jurisdiction of and under authority of
16 a foreign nation or its constituent units or a multinational or
17 international organization by any of the following persons:

- 18 1. A notary public or notary;
19 2. A judge, clerk, or deputy clerk of a court of record; or
20 3. Any other person authorized by the law of that jurisdiction
21 to perform notarial acts.

22 B. An "Apostille" in the form prescribed by the Hague
23 Convention of October 5, 1961, conclusively establishes that the
24

1 signature of the notarial officer is genuine and that the officer
2 holds the indicated office.

3 C. A certificate by a foreign service or consular officer of
4 the United States stationed in the nation under the jurisdiction of
5 which the notarial act was performed, or a certificate by a foreign
6 service or consular officer of that nation stationed in the United
7 States, conclusively establishes any matter relating to the
8 authenticity or validity of the notarial act set forth in the
9 certificate.

10 D. An official ~~stamp or~~ seal of the person performing the
11 notarial act is prima facie evidence that the signature is genuine
12 and that the person holds the indicated title.

13 E. An official ~~stamp or~~ seal of an officer listed in this
14 section is prima facie evidence that a person with the indicated
15 title has authority to perform notarial acts.

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

21 SECTION 16. AMENDATORY 49 O.S. 2011, Section 118, is
22 amended to read as follows:
23
24

1 Section 118. A. A notarial act must be evidenced by a
2 certificate signed and dated by a notarial officer. The certificate
3 shall ~~include identification of:~~

4 1. Be executed contemporaneously with the performance of the
5 notarial act;

6 2. Be signed and dated by the notarial officer, and if the
7 notarial officer is a notary public, be signed in the same manner as
8 on file with the Secretary of State;

9 3. Identify the jurisdiction in which the notarial act is
10 performed ~~and;~~

11 4. Contain the title of ~~the~~ office of the notarial officer; and
12 ~~may include the official stamp or seal of office.~~

13 5. If the officer is a notary public, ~~the certificate must also~~
14 indicate the date of expiration, ~~if any,~~ of the officer's commission
15 of office and the county of commission, but omission of that
16 information may subsequently be corrected. If the officer is a
17 commissioned officer on active duty in the military service of the
18 United States, it must also include the rank of the officer.

19 B. If a notarial act regarding a tangible record is performed by
20 a notary public, an official seal must be affixed to or embossed on
21 the certificate. If a notarial act is performed regarding a tangible
22 record by a notarial officer other than a notary public and the
23 certificate contains the information specified in paragraphs 2, 3 and
24

1 4 of subsection A of this section, an official seal may be affixed to
2 or embossed on the certificate.

3 C. If a notarial act regarding an electronic record is performed
4 by a notary public, the electronic notarial certificate must contain
5 the information specified in paragraphs 2, 3, 4 and 5 of subsection A
6 of this section and an official seal must be attached to or logically
7 associated with the electronic notarial certificate. If a notarial
8 act is performed regarding an electronic record by a notarial officer
9 other than a notary public and the certificate contains the
10 information specified in paragraphs 2, 3 and 4 of subsection A of
11 this section, an official seal may be attached to or logically
12 associated with the electronic notarial certificate.

13 D. A certificate of a notarial act or an electronic notarial
14 certificate is sufficient if it meets the requirements of subsection
15 A of this section and it:

16 1. Is in the short form set forth in Section ~~9~~ 119 of this ~~act~~
17 title;

18 2. Is in a form otherwise prescribed by the law of this state;

19 3. Is in a form prescribed by the laws or regulations
20 applicable in the place in which the notarial act was performed; or

21 4. Sets forth the actions of the notarial officer and those are
22 sufficient to meet the requirements of the designated notarial act.

23 ~~C.~~ E. By executing a certificate of a notarial act or an
24 electronic notarial certificate, the notarial officer certifies that

1 the officer has made the determinations required by Section ~~3~~ 113 of
2 this ~~act~~ title.

3 F. A notarial officer may not affix the officer's signature to,
4 or logically associate it with, a certificate until the notarial act
5 has been performed.

6 G. If a notarial act is performed regarding a tangible record, a
7 certificate must be part of, or securely attached to, the record. If
8 an electronic notarial act is performed regarding an electronic
9 record, the electronic notarial certificate must be affixed to, or
10 logically associated with, the electronic record. If the Secretary
11 of State has established standards pursuant to Section 23 of this act
12 for attaching, affixing, or logically associating the electronic
13 notarial certificate, the process must conform to the standards.

14 H. The official certificate of a notary public, attested by the
15 notary's official seal, is presumptive evidence of the facts stated
16 in cases where, by law, the notary public is authorized to certify
17 the facts.

18 SECTION 17. AMENDATORY 49 O.S. 2011, Section 119, is
19 amended to read as follows:

20 Section 119. The following short form certificates of notarial
21 acts are sufficient for the purposes indicated, if completed with
22 the information required by subsection A of Section ~~8~~ 118 of this
23 ~~act~~ title:

24 1. For an acknowledgment in an individual capacity:

1 State of

2 County of

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

5 _____
6 (Signature of notarial officer)

7 (Seal, if any)

8 _____
9 Title (and Rank)

10 (My commission expires:)

11 2. For an acknowledgment in a representative capacity:

12 State of

13 County of

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

17 _____
18 (Signature of notarial officer)

19 (Seal, if any)

20 _____
21 Title (and Rank)

22 (My commission expires:)

23 3. For a verification upon oath or affirmation:

24 State of

1 County of
2 Signed and sworn to (or affirmed) before me on (date) by
3 (name(s) of person(s) making statement).
4 _____
5 (Signature of notarial officer)
6 (Seal, if any)
7 _____
8 Title (and Rank)
9 (My commission expires:)
10 4. For witnessing or attesting a signature:
11 State of
12 County of
13 Signed or attested before me on (date) by (name(s) of
14 person(s)).
15 _____
16 (Signature of notarial officer)
17 (Seal, if any)
18 _____
19 Title (and Rank)
20 (My commission expires:)
21 5. For attestation of a copy of a document:
22 State of
23 County of
24

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

3 Dated

4 _____
5 (Signature of notarial officer)

6 (Seal, if any)

7 _____
8 Title (and Rank)

9 (My commission expires:)

10 SECTION 18. AMENDATORY 49 O.S. 2011, Section 120, is
11 amended to read as follows:

12 Section 120. A notarial act performed prior to November 1,
13 1985, is not affected by the provisions of the Uniform Law on
14 Notarial Acts. This act maintains and does not affect the ongoing
15 validity or effect of an electronic notarial act performed before

16 January 1, 2018, under authority of the Uniform Electronic
17 Transactions Act. The Uniform Law on Notarial Acts provides an
18 additional method of proving notarial acts. Nothing in the Uniform
19 Law on Notarial Acts diminishes or invalidates the recognition
20 accorded to notarial acts by other laws or regulations of this
21 state.

22 SECTION 19. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 128 of Title 49, unless there is
24 created a duplication in numbering, reads as follows:

1 The Uniform Law on Notarial Acts modifies, limits and supersedes
2 the Electronic Signatures in Global and National Commerce Act, 15
3 U.S.C. Section 7001 et seq., but does not modify, limit or supersede
4 Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
5 electronic delivery of any of the notices described in Section
6 103(b) of that act, 15 U.S.C. Section 7003(b).

7 SECTION 20. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 122 of Title 49, unless there is
9 created a duplication in numbering, reads as follows:

10 A notarial officer may select one or more tamper-evident
11 technologies to perform electronic notarial acts. A person may not
12 require a notarial officer to perform an electronic notarial act
13 with a technology that the notarial officer has not selected.

14 SECTION 21. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 123 of Title 49, unless there is
16 created a duplication in numbering, reads as follows:

17 A. A notary public in Oklahoma may perform acknowledgments,
18 administer an oath or affirmation, take a verification on oath or
19 affirmation, witness or attest electronic signatures and certify or
20 attest a copy by means of a real-time, two-way audio-video
21 communication, according the rules and standards established by the
22 Secretary of State.

23 B. Before a notary public performs an electronic notarial act
24 by means of audio-video communication, a notary public shall notify

1 the Secretary of State that the notary public will be performing
2 notarial acts with respect to electronic records and identify the
3 technology the notary public intends to use. If the Secretary of
4 State has established standards for approval of technology pursuant
5 to Section 23 of this act, the technology must conform to the
6 standards. If the technology conforms to the standards, the
7 Secretary of State shall approve the use of the technology.

8 C. Electronic notarial acts by means of audio-video
9 communication shall only be performed using technology that allows
10 the individuals communicating to simultaneously see and speak to one
11 another.

12 D. When performing an electronic notarial act by means of
13 audio-video communication, the signal transmission shall be live,
14 real time.

15 E. An electronic notarization by means of audio-video
16 communication performed by a notary public in accordance with this
17 section, regardless of the jurisdiction in which the principal
18 signer of the electronic record is physically located at the time of
19 the electronic notarization, is deemed to have been performed in
20 Oklahoma and shall be governed by Oklahoma law.

21 F. A notary public may perform an electronic notarial act by
22 means of audio-video communication in compliance with this section
23 and any rules adopted by the Secretary of State for a principal who
24 is physically located:

1. In Oklahoma;

2. Outside of Oklahoma but within the United States; or

3. Outside the United States if:

a. the act is not known by the notary public to be prohibited in the jurisdiction in which the principal is physically located at the time of the act, and

b. the electronic record is part of or pertains to a matter that is to be filed with or is before a court, governmental entity, or other entity in the United States, or the electronic record relates to property located in the United States, or the electronic record relates to a transaction substantially connected to a territorial jurisdiction in the United States.

G. The notary public shall arrange for a recording to be made of each remote notarization session that has been initiated and regardless of whether the session has been completed. The recording shall be stored for a minimum of five (5) years.

H. Prior to performing any electronic notarization by means of audio-video communication, the notary public shall inform all participating individuals that the electronic notarization by means of audio-video communication will be electronically recorded.

I. If the individual for whom the notarial act is being performed is being identified by personal knowledge, the recording of the electronic notarial act by means of audio-video communication

1 shall include an explanation by the notary public as to how the
2 notary public has come to know the individual for whom the notarial
3 act is being performed and the length of time the notary public has
4 known the individual.

5 J. If the individual for whom the notarial act is being
6 performed is being identified by credible witness:

7 1. The credible witness shall be in the physical presence of
8 the notary public; and

9 2. The recording of the electronic notarial act by means of
10 audio-video communication shall include:

11 a. a statement by the notary public as to whether the
12 notary public identified the credible witness by
13 personal knowledge or satisfactory evidence, and

14 b. an explanation by the credible witness as to how the
15 credible witness has come to know the individual for
16 whom the notarial act is being performed and the
17 length of time the credible witness has known the
18 individual.

19 SECTION 22. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 124 of Title 49, unless there is
21 created a duplication in numbering, reads as follows:

22 A. Except as otherwise provided in Section 6 of Title 49 of the
23 Oklahoma Statutes or in the case of a purported notarial act or
24 electronic notarization by an unauthorized person, the failure of a

1 notarial officer to perform a duty or meet a requirement specified
2 in this act does not invalidate a notarial act or any electronic
3 notarization performed by the notarial officer. The validity of a
4 notarial act under the Uniform Law on Notarial Acts does not prevent
5 an aggrieved person from seeking to invalidate the record or
6 transaction that is the subject of the notarial act or from seeking
7 other remedies based on law of this state other than this act or law
8 of the United States.

9 B. If another provision of law requires that a record be the
10 subject of a notarial act before the record can be accepted for
11 filing and recording in a land records office or court, an
12 electronic notarization by means of audio-video communication
13 satisfies any personal appearance requirement.

14 SECTION 23. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 125 of Title 49, unless there is
16 created a duplication in numbering, reads as follows:

17 A. The Secretary of State may promulgate rules to implement the
18 provisions of Title 49 of the Oklahoma Statutes. Rules adopted
19 regarding the performance of notarial acts with respect to
20 electronic records and electronic notarial acts by means of audio-
21 video communication shall not require, or accord greater legal
22 status or effect to, the implementation or application of a specific
23 technology or technical specification. The rules may:

24

1 1. Prescribe the manner of performing notarial acts regarding
2 tangible and electronic records;

3 2. Include provisions to ensure that any change to or tampering
4 with a record bearing a certificate of a notarial act is self-
5 evident;

6 3. Include provisions to ensure integrity in the creation,
7 transmittal, storage or authentication of electronic records or
8 signatures;

9 4. Prescribe the process of granting, renewing, conditioning,
10 denying, suspending or revoking a notary public commission and
11 assuring the trustworthiness of an individual holding a commission
12 as a notary public;

13 5. Include provisions to prevent fraud or mistake in the
14 performance of notarial acts; and

15 6. Establish the process for approving and accepting surety
16 bonds and other forms of assurance under Section 2 of Title 49 of
17 the Oklahoma Statutes.

18 B. In adopting, amending or repealing rules about notarial acts
19 with respect to electronic records, the Secretary of State shall
20 consider, so far as is consistent with the provisions of Title 49 of
21 the Oklahoma Statutes:

22 1. The most recent standards regarding electronic records
23 promulgated by national bodies, such as the National Association of
24 Secretaries of State;

1 2. Standards, practices and customs of other jurisdictions that
2 substantially enact the Uniform Law on Notarial Acts; and

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

5 SECTION 24. RECODIFICATION 49 O.S. 2011, Sections 120,
6 as amended by Section 18 of this act, and 121, shall be recodified
7 as Sections 126 and 127, respectively, of Title 49 of the Oklahoma
8 Statutes, unless there is created a duplication in numbering.

9 SECTION 25. This act shall become effective November 1, 2017.

10
11 COMMITTEE REPORT BY: COMMITTEE ON RULES, dated 02/21/2017 - DO PASS.
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