

**PROPOSED TEMPORARY REGULATION OF THE  
SECRETARY OF STATE  
(NAC CHAPTER 240)**

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**The following document is the temporary regulation proposed  
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**PROPOSED REGULATION  
OF THE SECRETARY OF  
STATE**

September 28, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted

AUTHORITY: AB 413 of the 2017 Legislative Session Sections 29- 63, inclusive, NRS 240.017, 240.018, 240.030, 240.1657 and 240.206

**Chapter 240 of the NAC is hereby amended by adding thereto the provisions set forth as sections 1 – 53, inclusive, of this regulation.**

*Section 1. As used in sections 1 to 53, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 2 to 11, inclusive, of this regulation have the meanings ascribed to them in those sections.*

*Sec. 2. “Principal” means the natural person whose signature is notarized in a traditional or electronic notarization.*

*Sec 3. “Electronic notarial certificate” means the portion of a notarized electronic document that is completed by an electronic notary public that bears the notary public’s electronic signature, electronic seal and certification language as provided by Nevada law. If the notarial act is performed using audio-video communication, the certificate shall also include a statement that the act was performed using audio-video communication.*

*Sec. 4. “Electronic notarization solution” means a set of applications, programs, hardware, software or technology designed to enable the performance of an electronic notarial act.*

**Sec 5.** *“Exclusive control” has the same meaning as “sole control” as defined in NRS 240.201(8).*

**Sec. 6.** *“Identity proofing” means a process or a service operating according to this chapter through which a third person or party affirms the identity of the principal through a review of personal information from public or proprietary data sources.*

**Sec. 7.** *“Outside the United States” means outside the geographic boundaries of a state or commonwealth of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands and any territory or insular possession subject to the jurisdiction of the United States.*

**Sec. 8.** *“Real time” means the actual span of uninterrupted, simultaneous communication during which all parts of a notarial act using audio-video communication occur.*

**Sec. 9.** *“Solution provider” means a third-party vendor providing a system to a Nevada electronic notary for the completion of the electronic notarial act.*

**Sec. 10.** *“Tamper-evident” means that any change to an electronic document shall display evidence of the change.*

**Sec 11.** *“Credential” includes a valid, government-issued card or other document issued as a means of identifying the principal and that contains the photograph and signature of the principal.*

**Sec. 12.** *Upon an applicant’s meeting the qualifications for registration as an electronic notary, the Secretary of State shall cause the registration to be updated to allow the applicant to perform electronic notarizations.*

**Sec 13.** *In addition to the provisions of NRS 240.192, a registration as an electronic notary public shall include:*

- 1. The notary public’s commission number as assigned by the Secretary of State;*
- 2. The name of the vendor whose platform or product the notary intends to use to perform electronic notarization;*
- 3. A copy of the notary public’s electronic seal and signature which is an exact representation of the signature on file with the Secretary of State;*  
*and*
- 4. A statement certifying that the notary will comply with the provisions of this Chapter and NRS Chapter 240.*

**Sec 14.** *An electronic notarization, including notarization using audio-video communication may only be performed by a notary approved by the Secretary of State to perform such notarization. A notary providing electronic notary service without Secretary of State approval is subject to suspension or termination of his or her notary commission*

*and other penalties as prescribed by this Chapter and NRS Chapter 240.*

**Sec. 15.** *A Nevada electronic notary public performing a notarial act using audio-video communication must be able to:*

- 1. Identify the principal using multi-factor identification as prescribe by this Chapter and NRS Chapter 240; and*
- 2. Identify the record as the same record in which the principal executed the signature.*

**Sec 16.** *A Nevada electronic notary public shall take reasonable steps to:*

- 1. Ensure the integrity, security and authenticity of electronic notarizations;*
- 2. Maintain a secure backup for the electronic journal;*
- 3. Maintain a secure backup for the recording, if the notarial act is performed using audio-video communication; and*
- 4. Ensure that any audio-video communication for the purpose of a notarial act using audio-video communication is secure from unauthorized access or interception.*

**Sec 17.** *Nothing in this regulation shall require a principal to participate in a notarial act using audio-video communication.*

**Sec. 18.** *Nothing in this regulation shall require a Nevada electronic notary public to participate in a notarial act using audio-video communication.*

**Sec 19.** *If the principal or electronic notary public must exit the audio-video communication session, the audio-video communication link is broken, or the resolution or quality of the*

*transmission becomes such that the electronic notary public believes the process has been compromised and cannot be completed, the process must be started from the beginning.*

#### *SOLUTION/SOLUTION PROVIDER*

**Sec. 20.** *A solution provider must maintain a current State business license in Nevada at all times a Nevada electronic notary public is utilizing their solution.*

**Sec 21.** *A solution provider shall take reasonable steps to ensure that a Nevada electronic notary public using its solution has complied with Nevada law pertaining to the registration, training and other requirements pertaining to notaries public in Nevada.*

**Sec 22.** *The electronic notary solution provider must register with the Secretary of State.*

*Registration shall be made electronically and shall include:*

- 1. Legal name of the solution provider;*
- 2. How the business is organized;*
- 3. Mailing address of the solution provider;*
- 4. Physical address of the solution provider;*
- 5. Contact name;*
- 6. Phone number of the contact person;*
- 7. The name of the solution provided;*
- 8. The name of the provider or providers of the knowledge-based*

*authentication, credential analysis and digital certificate services;*



9. *The Nevada State Business License number;*
10. *A description of the technology used to ensure compliance with the provisions of this chapter and NRS Chapter 240;*
11. *Plan for the disposition, including but not limited to the retention and storage of documents, journals, recordings, etc., in the event the vendor no longer provides the electronic notary solution, for whatever reason; and*
12. *Declaration that the solution complies with Nevada Laws pertaining to notarization.*

**Sec. 23.** *A solution for the notarization of an electronic document using audio-video communication must be approved by the Secretary of State prior to use in this state and must:*

1. *Provide secure access to the solution by password or other secure means identifying the Nevada electronic notary public;*
2. *Verify from the Secretary of State's notary registry each time an electronic notary public logs into the solution to ensure that the electronic notary is in active status before performing an electronic notarization;*
3. *Prohibit the start or completion of the notarial act if the solution cannot verify that the notary is currently registered as an electronic notary public;*
4. *Provide for the uninterrupted, continuous, simultaneous audio-video communication between the electronic notary public and principal;*
5. *Provide for high-quality video resolution and audio quality to ensure that the notary public and the principal can see, hear and communicate with each other in real-time and that will allow the Notary public to match the principal with the*

*credential;*

6. *Provide for a secure communication link that ensures that only the parties to the notarial act are part of the audio-video communication;*
7. *Provide for an electronic notary journal to document the electronic notarial acts that complies with the provisions of this chapter and NRS Chapter 240;*
8. *Provide for the recording of the notarial act in sufficient quality to ensure the verification of the notarial act;*
9. *Provide authentication that the electronic document presented is the same electronic document notarized;*
10. *Allow for the affixation of the notarial wording and notary seal as required by this chapter and NRS Chapter 240;*
11. *Allow for viewing of the notary seal and signature by a person viewing the electronic document;*
12. *Provide a method of determining if the electronic document has been altered after the notarial seal has been affixed and the notarial act has been completed;*
13. *Prevent unauthorized access to:*
  - a. *The transmission between the electronic notary public and the principal;*
  - b. *The recording of the notarial act by audio-video communication;*
  - c. *Any personal identifying information (PII) used in credential analysis and identity proofing or other part of the audio-video communication, including but not limited to:*
    - i. *Methods of credential analysis and the output;*
    - ii. *Identification cards;*
    - iii. *Knowledge-based authentication questions and answers;*

*iv. Birthdate; and*

*v. Social security numbers;*

*d. The electronic document that is being notarized; and*

*14. Provide a method of generating a paper copy of the document including the notarial certificate, signature and seal and any other document associated with the execution of the notarial act.*

*Upon material change of the solution provided, the solution provider shall immediately notify the Secretary of State and all Nevada notaries public using its solution of the change. The Secretary of State shall determine if the solution still meets the state requirements due to the change.*

#### *PAYMENT*

*Sec 24. The registration as an electronic notary public must be accompanied by the fee provided by NRS 240.192(1)(c) and must be paid by:*

- 1. Credit card;*
- 2. Debit card;*
- 3. Trust account established with the Secretary of State; or*
- 4. Any other payment method utilized by the Secretary of State for the provision of online services.*

*If the payment method which is used to pay the application fee for an application for registration as an electronic notary public is subsequently dishonored by a bank due to*

*challenge or any other reason, the Secretary of State may immediately and without a hearing revoke the registration as an electronic notary public.*

#### *COURSE OF STUDY*

*Sec. 25. As provided by NRS 240.195, a notary public wishing to register as an electronic notary public is required to take the additional required course of study as provided by the Secretary of State. This course of study is in addition to that required in NRS 240.018 and requires a separate fee as provided for in NRS 240.018.*

*Sec. 26. Fees for the course of study are paid using the methods authorized in Section 24 of this regulation.*

#### *ELECTRONIC NOTARY REGISTRATION*

*Sec. 27. In addition to the requirements provided by NRS 240.030 and NRS 240.192, the registration must include a statement that the applicant will comply with the provisions of this chapter and NRS Chapter 240.*

*Sec. 28. The electronic signature submitted with the registration pursuant to NRS 240.192(2)(c) must also be provided in a file format that can be read without the need for additional software and that can be compared for authentication purposes.*

**Sec. 29.** *All requirements for registration as required by this chapter and NRS Chapter 240 must be present or the registration may be denied.*

**Sec. 30.** *A notary whose registration as an electronic notary has been approved by the Secretary of State will retain the commission number related to his or her active notary commission.*

**Sec 31.** *The effective date of the registration as an electronic notary is the date all requirements have been met and confirmed by the Secretary of State and the registration is entered into the Secretary of State's processing system.*

**Sec. 32.** *The cancellation of the registration as an electronic notary pursuant to NRS 240.203 is effective upon receipt by the Secretary of State from the electronic notary public of the notice requesting cancellation of the registration.*

#### *IDENTITY PROOFING AND CREDENTIAL ANALYSIS*

**Sec. 33.** *Credential analysis must be provided by a reputable third party that can demonstrate proven credential analysis processes and shall employ at a minimum technology:*

- 1. That will allow the electronic notary public to accurately verify the identity of a principal;*

2. *That allows the electronic notary public to compare the physical appearance of the principal through audio-video communication to the photo and physical attributes contained in the credential;*
3. *That will ensure the presence of credential's security features;*
4. *That confirms the information contained in the credential through the use of information held by the issuing authority;*
5. *That confirms the credential is not fraudulent or has not been altered;*
6. *Confirms the principal is in possession of the credential; and*
7. *Ensures the image of the credential is in a resolution sufficient to allow the electronic notary to identify the principal.*

**Sec. 34.** *If the electronic notary public is unable to validate the credential of the principal, or to match the principal's physical features with the credential, the process is stopped and the electronic notary public shall not complete the electronic notarial act. No further attempt may be made to complete the notarial act using audio-video communication.*

#### *DYNAMIC KNOWLEDGE-BASED AUTHENTICATION (KBA)*

**Sec. 35.** *Dynamic knowledge-based authentication assessment shall at a minimum:*

1. *Be provided by a reputable third party that can demonstrate proven knowledge-based authentication processes;*
2. *Require the principal to answer no less than 5 questions related to the principal's personal history or identity derived from public or proprietary data*

*sources;*



3. *Require each question have a minimum of 5 possible answers;*
4. *Require that 80% of the questions are correctly answered within 2 minutes by the principal;*
5. *Require that if the principal does not correctly answer 80% of the questions that:*
  - a. *The principal may make a second attempt with the same electronic notary public within a 24-hour period;*
  - b. *If the principal retakes the quiz a second time within the 24-hour period, 60% of the questions must be replaced with 80% of all questions answered correctly;*
6. *Confirm affirmatively that that the principal has or has not correctly answered the questions;*
7. *Prohibit notarization of any electronic document by audio-video communication by the same electronic notary public within 24 hours if the principal has failed to correctly answer the required questions; and*
8. *Keep confidential any questions asked and responses as part of the knowledge-based authentication process.*

#### *OTHER METHOD OF IDENTITY PROOFING*

**Sec. 36.** *An electronic notary public may satisfy NRS 240.1997 (1)(b)(3) by utilizing a third-party vendor approved by the Secretary of State to verify the identity of the principal for whom a notarial act by audio-video communication is performed. The Secretary of State shall not approve a method used by a third-party vendor unless the Secretary of State*

*determines that*

*the method will meet or exceed the accuracy of identity verifications conducted through a dynamic knowledge-based authentication assessment.*

**Sec 37.** *An application for approval of a third-party vendor pursuant to section 36 may be made by a written request to the Secretary of State. The application must identify the method used by a third-party vendor and include sufficient evidence to demonstrate that the method meets the requirements of Section 36. The Secretary of State may approve, reject, or request additional information on the application.*

SEAL

**Sec. 38.** *The electronic seal used by an electronic notary public affixed to an electronic document during an electronic notarial act must comply with the provisions of NRS 240.040 and shall duplicate the seal used by a traditional notary except:*

- 1. That once the electronic seal, signature and certificate are affixed and the electronic notarial act is complete, the document is rendered tamper-evident; and*
- 2. If the notarial act is performed by audio-video communication, the statement “Notarial act performed by audio-video communication” must appear immediately below the stamp.*

JOURNAL

**Sec. 39.** *The electronic journal required pursuant to NRS 240.201 must not contain any personal identifying information (PII) that would not be otherwise required pursuant to this act nor shall it include the recording of the notarial act if the act is performed by audio-video communication, unless the recording is protected from unauthorized access pursuant to this chapter.*

**Sec. 40.** *An electronic journal may not allow a record to be deleted or altered in content or sequence by the electronic notary public or any other person after the journal entry is recorded.*

**Sec. 41.** *Pursuant to NRS 240.201, the electronic journal must be open to public inspection.*

**Sec. 42.** *The electronic journal required pursuant to NRS 240.201 must be securely backed up.*

#### *RECORDING OF REMOTE NOTARIAL ACT*

**Sec. 43.** *A notarial act performed using audio-video communications is required to be recorded pursuant to NRS 240.1995 and shall be recorded separately from the electronic notary journal.*

**Sec 44.** *The recording of an electronic notarial act pursuant to NRS 240.1995 must be protected from unauthorized access and any personal identifying information (PII)*

*protected.*

**Sec. 45.** *The recording of an electronic notarial act pursuant to NRS 240.1995 is available:*

- 1. To the principal for which the notarial act was performed;*
- 2. To the Secretary of State's Office;*
- 3. To law enforcement or state, federal or local agency in the course of an enforcement action;*
- 4. Pursuant to subpoena or court order; and*
- 5. To the electronic notary public that performed the notarial act using audio-video communications for the purposes of Subsections 1 - 4.*

**Sec 46.** *Nothing in this regulation gives the employer of an electronic notary public or a solution provider the right to access the electronic seal, electronic signature, solution or recording of the notarial act using audio-video communication.*

**Sec. 47.** *A Nevada notary public is responsible for maintaining accurate and reliable notarial records. A Nevada electronic notary public may use a third-party solution provider for the storage of the electronic journal and the recording of a notarial act using audio-video communication subject to the provisions of this chapter and NRS Chapter 240 if the third- party solution provider:*

- 1. Has registered with the Secretary of State;*
- 2. Demonstrates the capability of providing such service;*
- 3. Allows the electronic notary sole control of the electronic journal and the recording of the notarial act using audio-video communication; and*

- 4. Provides access to the electronic journal and the recording of the notarial act using audio-video communication pursuant to this chapter.*

#### *PROHIBITED ACTS*

**Sec. 48.** *In addition to the prohibited acts provided by NRS 240.075, an electronic notary public shall not:*

- 1. Fail to inform the principal that the notarial act is being performed using audio-video communication;*
- 2. Perform notarial act using audio-video communication while the electronic notary public is outside Nevada;*
- 3. Fail to record and/or properly store the recording of the notarial act performed using audio-video communication;*
- 4. Use an invalid electronic seal or certificate in the performance of an electronic notarial act;*
- 5. Fail to report a change in electronic seal or digital certificate;*
- 6. Use the electronic notary public's electronic signature and/or electronic seal except in the performance of an electronic notarial act;*
- 7. Allow improper access to the electronic notary journal, signature, certificate or to the solution used to provide electronic notarial acts; or*
- 8. Violate any other requirement of this chapter and NRS Chapter 240 pertaining to the conduct of an electronic notarial act.*

**Sec 49.** *The penalties, prohibitions, liabilities, sanctions and remedies for the improper performance of electronic notarial acts are the same as provided by law for the improper performance of non-electronic notarial acts.*

**Sec. 50.** NAC 240.200 is hereby amended to read as follows: ([NRS 240.017](#)) The fee required to be paid to the Secretary of State pursuant to the provisions of paragraph (a) of subsection 1 of [NRS 240.030](#) and [NRS 240.192](#) at the time the application for appointment as a notary public *or registration as an electronic notary public* is submitted is imposed for the purpose of processing the application *or registration* and is not refundable.

**Sec. 51.** NAC 240.210 is hereby amended to read as follows: ([NRS 240.017](#))

1. A person applying for appointment as a notary public may use his or her given name, a short or familiar form of his or her given name or the first initial of his or her given name, followed by the person's surname.

2. The bond that a person applying for appointment as a notary public must enter into pursuant to the provisions of paragraph (d) of subsection 1 of [NRS 240.030](#) must be entered under the same form of the person's name that appears on the application for appointment.

3. A notary public may use his or her given name, a short or familiar form of his or her given name or the first initial of his or her given name, followed by the notary public's surname, as his or her official signature *which must be consistent with the original signature on the application for appointment as a notary public.*



**Sec. 52. NAC 240.250 is hereby amended to read as follows: ([NRS 240.017](#))**

1. A person may file a complaint in writing with the Secretary of State alleging that a notary public has violated one or more of the provisions of [chapter 240](#) of NRS. The complaint must

include:

- (a) The name of the notary public;
- (b) If known, the name of the county in which the notary public resides;
- (c) If known and if assigned, the number on the certificate of appointment of the notary public;
- (d) An explanation of the reason for the complaint and, if known, the citation of each statutory provision which the notary public is alleged to have violated;
- (e) A copy of each document which is related to the matter; **and**
- (f) Whether the notarial act was performed using audio-video communication; and***
- (g) Such other information as the person considers relevant to the matter.***

2. The complaint may be filed in person, by facsimile machine or by mail.

3. Within 15 days, excluding Saturdays, Sundays and legal holidays, after receiving a complaint, the Secretary of State will notify in writing the notary public who is the subject of the complaint. In the notice, the Secretary of State will include a copy of the complaint. The notice must be sent by **certified U.S. mail** ***or other delivery method with a tracking mechanism*** and must

contain:

- (a) A statement of the statutory provision which the notary public is alleged to have violated;
- (b) An explanation of the possible disciplinary actions that may be taken against the notary public;

(c) Instructions for the notary public to respond to the complaint by mail or by facsimile machine; and

(d) A statement that the notary public must respond to the complaint within 10 days after receiving the notice.

4. If, after receiving the response from the notary public, the Secretary of State determines that a hearing is not warranted, he or she will provide notification of his or her determination and the reasons therefor to the notary public and the person who filed the complaint.

**Sec. 53. NAC 240.270 is hereby amended to read as follows: ([NRS 240.017](#), [240.018](#))**

1. The Secretary of State will provide *an online* ~~at least one~~ course of study ~~per month~~ for the mandatory training of notaries public *and electronic notaries public*. ~~The Secretary of State may prepare a workbook for each course containing such documents, forms and instructions as the Secretary of State deems necessary. No workbook is required as a prerequisite to attend any course of study.~~

2. ~~Except as otherwise provided in subsection 3, an~~ *An* applicant for appointment as a notary public who is required pursuant to [NRS 240.018](#) to enroll in and successfully complete a course of study for the mandatory training of notaries public must include with his or her application a certificate of successful completion of such a course, which must contain a validation stamp from the Secretary of State. A certificate of successful completion of a course of study for the mandatory training of notaries public is valid for 90 days after the date of its issuance.

3. *An applicant for registration as an electronic notary public who is required pursuant to NRS 240.1943 to enroll in and successfully complete a course of study for the mandatory training of electronic notaries public must include with his or her registration as an electronic*

*notary public a certificate of successful completion of such a course. A certificate of successful completion for the mandatory training of electronic notaries public is valid for 90 days after the*

*date of its issuance.* ~~The Secretary of State or a designee of the Secretary of State may, upon good~~

~~cause shown by an applicant for appointment as a notary public who is required pursuant to NRS~~

~~240.018 to enroll in and successfully complete a course of study for the mandatory training of notaries public, appoint the applicant as a notary public subject to the condition that the applicant~~

~~successfully complete the course of study within a period specified by the Secretary of State or the~~

~~designee of the Secretary of State. Good cause includes, without limitation, the inability of the applicant to attend a course of study because of weather conditions, the medical condition of the applicant or the geographic proximity of the applicant to the offered courses of study.~~

~~—4.—~~The Secretary of State may authorize the provision of a course of study for the mandatory

training of notaries public *and electronic notaries public* by a qualified third party subject to the terms and conditions established by the Secretary of State or a designee of the Secretary of State.