

ADOPTED REGULATION
OF THE SECRETARY OF STATE
LCB File No. R065-19

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

AUTHORITY: §§1-8, 15-17, 33-35, 37 and 42, NRS 240.206; §§9-14, 38, NRS 240.192 and 240.206; §§18 and 36, NRS 240.017 and 240.206; §§19, 20 and 24, NRS 240.017, 240.1991 and 240.206; §§21-23, NRS 240.017, 240.1991, 240.1997 and 240.206; §26, NRS 240.017, 240.1995, 240.201 and 240.206, §§25, 27 and 28, NRS 240.017, 240.1995 and 240.206; §29, NRS 240.017, 240.199, 240.202 and 240.206; §§30-32, NRS 240.017, 240.201 and 240.206; §39-41, NRS 240.017

A REGULATION relating to electronic notarization; adopting provisions governing electronic notaries public and the performance of electronic notarial acts; establishing provisions relating to the registration of a person as an electronic notary public; imposing certain duties and prohibitions on electronic notaries public; adopting provisions governing the performance of an electronic notarial act using audio-video communication; establishing requirements related to the electronic seal of an electronic notary public and the electronic journal kept by an electronic notary public; adopting requirements for the use of a solution provider by an electronic notary public to perform electronic notarial acts; establishing penalties for the improper performance of an electronic notarial act; revising provisions relating to the signature of a notary public; revising provisions governing complaints concerning a notary public; revising provisions governing the course of study for the mandatory training of notaries public; establishing the procedure for the revocation of a registration as an electronic notary public; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law establishes the Electronic Notary Public Authorization Act, renamed the Electronic Notarization Enabling Act, pursuant to which an electronic notary public registered with the Secretary of State is authorized to perform electronic notarial acts. (NRS 240.181-240.206) Existing law authorizes the Secretary of State to carry out the provisions of existing law governing electronic notaries public and the performance of electronic notarial acts. (NRS 240.206)

Existing law prohibits a person from representing himself or herself as an electronic notary public if the person has not registered with the Secretary of State as an electronic notary public. (NRS 240.191) Under existing law, a person registering as an electronic notary public is required to: (1) submit an electronic registration to the Secretary of State; (2) pay to the Secretary of State a registration fee of \$50; and (3) submit to the Secretary of State with the registration proof that the registrant has successfully completed a required course of study in the performance of electronic notarial acts and complied with the requirements of existing law for taking an oath as a public officer and entering into a bond with the State of Nevada. (NRS 240.192) **Section 10** of this regulation requires a person registering as an electronic notary public to submit certain additional information with his or her registration. **Section 11** of this regulation clarifies that the requirement to successfully complete the required course of study in the performance of electronic notarial acts and pay the fee for that course is in addition to the requirement to successfully complete the required course of study in the performance of notarial acts and to pay the fee for that course. **Section 12** of this regulation: (1) specifies the manner in which a person seeking to register as an electronic notary public is required to pay the fee for that registration and for the required course in the performance of electronic notarial acts; and (2) authorizes the Secretary of State to refuse to register or revoke the registration of a person whose method of payment for these fees is dishonored or stopped before payment. **Section 13** of this regulation: (1) provides that the Secretary of State will approve the registration of a person as an electronic notary public if the person has complied with all requirements for such registration; (2) authorizes the Secretary of State to refuse to register a person as an electronic notary public if the person has not complied with those requirements; and (3) provides that the registration of a person as an electronic notary becomes effective at the time the Secretary of State updates the processing system maintained by the Secretary of State to indicate such a registration. **Section 9** of this regulation: (1) authorizes electronic notarial acts to be performed only by a person whose registration has been approved by the Secretary of State and whose registration is in active status; and (2) provides for the suspension or revocation of the commission of a notary public who performs or offers to perform an electronic notarial act without such a registration. **Section 14** of this regulation provides that a notary public who is registered as an electronic notary public retains the commission number assigned by the Secretary of State to the notary public.

Sections 15-17 of this regulation impose certain requirements on an electronic notary public who performs electronic notarial acts. **Section 15** of this regulation establishes the manner in which an electronic notary public is required to confirm the identity of a person before the electronic notary public performs an electronic notarial act for that person. **Section 16** of this regulation requires an electronic notary public to maintain an accurate and reliable record of each electronic notarial act that he or she performs. **Section 17** of this regulation imposes certain requirements on an electronic notary public related to the security of electronic notarial acts. **Section 33** of this regulation prohibits an electronic notary public from engaging in certain acts.

Existing law authorizes an electronic notary public to perform an electronic notarial act using audio-video communication if the electronic notary public complies with statutory requirements and any regulations adopted by the Secretary of State. (NRS 240.1991) **Sections**

18-24 of this regulation establish requirements for the performance of an electronic notarial act using audio-video communication. **Section 18** of this regulation defines when a person for whom an electronic notarial act is performed is physically located outside the United States for the purposes of the provision of existing law prohibiting the performance of an electronic notarial act for a person physically located outside the United States. (NRS 240.1993) **Section 19** of this regulation authorizes the use of audio-video communication to perform an electronic notarial act only if the electronic notary public and the person for whom the electronic notarial act is performed agree to the use of audio-video communication to perform the electronic notarial act. **Section 20** of this regulation requires an electronic notary public using audio-video communication to perform an electronic notarial act to verify the identity of the person for whom the electronic notarial act is performed in accordance with **section 15** and to identify the electronic document on which the electronic notarial act is performed as the document on which the person executed his or her signature. **Section 21** of this regulation establishes the manner in which a credential analysis is required to be conducted for the purpose of verifying the identity of the person for whom an electronic notarial act is performed, and **section 22** of this regulation establishes the manner in which a dynamic knowledge-based authentication assessment is required to be performed for the purpose of verifying the identity of the person for whom an electronic notarial act is performed. **Section 23** of this regulation establishes the requirements for an electronic notary public to use a third-party vendor to establish the identity of a person for whom an electronic notarial act is performed. **Section 24** requires an electronic notary public who is using audio-video communication to perform an electronic notarial act to restart the performance of the electronic notarial act under certain circumstances.

Existing law requires an electronic notary public who uses audio-video communication to perform an electronic notarial act to arrange for a recording of each electronic notarial act performed using audio-video communication. (NRS 240.1995) **Sections 25-28** of this regulation establish requirements related to the recording of such an electronic notarial act. **Section 25** of this regulation requires the recording and any personally identifying information disclosed during the performance of the electronic notarial act to be protected from unauthorized access. **Section 26** of this regulation authorizes an electronic notary public to use a third-party vendor to store the electronic journal of electronic notarial acts performed by the electronic notary public and the recordings of such acts performed using audio-video communication under certain circumstances. **Section 27** of this regulation sets forth the persons to whom the recording of an electronic notarial act performed using audio-video communication may be made available. **Section 28** of this regulation sets forth the persons who are authorized to access the electronic seal and electronic signature of an electronic notary public who uses audio-video communication to perform an electronic notarial act, the recording of the electronic notarial act and the product or service used by the electronic notary public to perform that act.

Existing law requires an electronic notarial act to be evidenced by the electronic signature and electronic seal of the electronic notary public performing the electronic notarial act and the wording of certain notarial certificates. (NRS 240.199) **Section 29** of this regulation requires: (1) the electronic seal of an electronic notary public to include the information required to be set

forth in the mechanical stamp of a notary public and to generally conform to the size and other requirements for such a mechanical stamp; (2) an electronic document to be rendered tamper-evident after the electronic seal, electronic signature and electronic notarial certificate are affixed to or logically associated with the electronic document; and (3) an electronic notary public to include a certain notation on an electronic document indicating that an electronic notarial act was performed using audio-video communication if the electronic notarial act was performed using such communication.

Existing law requires an electronic notary public to keep an electronic journal of each electronic notarial act performed by the electronic notary public and authorizes the Secretary of State to suspend the registration of an electronic notary public who fails to produce his or her electronic journal within 10 days after receipt of a request from the Secretary of State. (NRS 240.201) **Sections 30-32** of this regulation establish requirements related to the electronic journal kept by an electronic notary public. **Section 30** of this regulation requires an electronic journal: (1) to not allow any person to delete a record in the electronic journal or to alter the content or sequence of such a record; and (2) to be securely backed-up by the electronic notary public and the solution provider whose electronic notarization solution is used by the electronic notary public to perform electronic notarial acts. **Section 31** of this regulation prohibits an electronic notary public from including in his or her electronic journal: (1) personally identifying information unless such information is required by law to be included in the electronic journal; or (2) any recording of an electronic notarial act performed using audio-video communication. **Section 32** of this regulation requires an electronic notary public to allow the inspection of his or her electronic journal for any lawful purpose.

Sections 5 and 8 of this regulation define a “solution provider” as a third-party vendor who provides a set of applications, programs, hardware, software or technology designed to enable the performance of an electronic notarial act. **Section 34** of this regulation: (1) prohibits a person from acting as a solution provider unless the person is registered with the Secretary of State and maintains a current state business license at all times that an electronic notary public in this State is using a product or service of the solution provider to perform electronic notarial acts; and (2) establishes the manner in which a person registers with the Secretary of State as a solution provider. **Section 35** of this regulation provides that the Secretary of State will register a solution provider if the electronic notarization product or service provided by the solution provider meets certain standards and requires the solution provider to notify the Secretary of State of certain changes to that product or service.

Section 37 of this regulation provides that the penalties for the improper performance of an electronic notarial act are the same as the penalties for the improper performance of a notarial act that is not an electronic notarial act.

Existing regulations provide that the fee required to be paid for appointment as a notary public is nonrefundable. (NAC 240.200) **Section 38** of this regulation provides that the fee required to be paid for registration as an electronic notary public is also nonrefundable.

Section 39 of this regulation requires the official signature of a notary public to be consistent with the original signature on his or her application for appointment as a notary public.

Section 40 of this regulation requires any complaint filed with the Secretary of State concerning a notary public to indicate whether the notarial act that is the subject of the complaint was an electronic notarial act performed using audio-video communication.

Section 41 of this regulation removes the authority of the Secretary of State to: (1) prepare a workbook containing the documents, forms and instructions deemed necessary by the Secretary of State for the course of study for the mandatory training of notaries public; and (2) upon a showing of good cause, appoint as a notary public an applicant for appointment as a notary public subject to the condition that the applicant successfully complete the course of study for the mandatory training of notaries public.

Section 42 of this regulation provides that the procedure for the revocation of a registration as an electronic notary public is the same as the procedure for the revocation of a commission as a notary public.

Section 1. Chapter 240 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 37, inclusive, of this regulation.

Sec. 2. *As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 240.002 to 240.0067, inclusive, and 240.1821 to 240.1882, inclusive, and sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Credential” has the meaning ascribed to it in NRS 240.1823 and includes, without limitation, a card or other document issued by a governmental entity as a means of identifying the principal that contains the photograph and signature of the principal and constitutes satisfactory evidence of the identity of a principal for the purposes of NRS 240.1655.*

Sec. 4. *“Electronic notarial certificate” means the portion of an electronic document that:*

- 1. Is completed by an electronic notary public; and*
- 2. Bears the electronic signature and electronic seal of the electronic notary public and the wording of the applicable notarial certificate as required by NRS 240.1655, 240.166 to 240.167, inclusive, 240.1685 or 240.169.*

Sec. 5. *“Electronic notarization solution” means a set of applications, programs, hardware, software or technology designed to enable the performance of an electronic notarial act.*

Sec. 6. *“Identity proofing” means a process or service through which the identity of a principal is affirmed through a review of personal information from public or proprietary data sources.*

Sec. 7. *“Principal” means the natural person for whom an electronic notarial act is performed.*

Sec. 8. *“Solution provider” means a third-party vendor that provides an electronic notarization solution.*

Sec. 9. *1. A person may not perform an electronic notarial act, including, without limitation, an electronic notarial act performed using audio-video communication, unless the Secretary of State has approved the registration of the person as an electronic notary public pursuant to section 13 of this regulation and the registration is in active status.*

2. The Secretary of State may suspend or revoke the appointment of a notary public who performs or offers to perform an electronic notarial act without a registration as an electronic

notary public that has been approved by the Secretary of State pursuant to section 13 of this regulation and is in active status.

Sec. 10. *In addition to the information required by NRS 240.192, a person registering as an electronic notary public must include with his or her registration:*

- 1. The notary public commission number assigned to the person by the Secretary of State;*
- 2. The name of each solution provider whose electronic notarization solution the person intends to use to perform an electronic notarial act;*
- 3. A copy of the electronic seal and electronic signature of the person that is:*
 - (a) An exact representation of the handwritten signature of the person on file with the Secretary of State; and*
 - (b) In a file format that can be read without additional software and be compared for authentication purposes to the person's handwritten signature on file with the Secretary of State;*
- 4. A certificate or other proof of successful completion of the course of study on electronic notarization provided pursuant to NRS 240.195, which indicates successful completion of the course not earlier than 90 days before submission of the registration; and*
- 5. A statement certifying that the person will comply with the applicable provisions of this chapter and chapter 240 of NRS.*

Sec. 11. *A notary public seeking to register as an electronic notary public must successfully complete the required course of study on electronic notarization provided pursuant to NRS 240.195 and pay the fee charged by the Secretary of State to each person who enrolls in such a course of study. The required course of study on electronic notarization*

provided pursuant to NRS 240.195 and the fee for that course is in addition to the requirements imposed on the notary public to successfully complete a course of study pursuant to NRS 240.018 and to pay the fee for that course.

Sec. 12. 1. *A person registering as an electronic notary public must pay the registration fee required by NRS 240.192 and the fee for the course of study provided pursuant to NRS 240.195 using any of the following methods of payment:*

(a) A credit card.

(b) A debit card.

(c) The Trust Account for Advance Fees established by the Secretary of State pursuant to NRS 225.165.

(d) Any other method of payment used by the Secretary of State for the provision of online services.

2. *If any method of payment submitted by a person to the Secretary of State pursuant to subsection 1 is returned to the Secretary of State or otherwise dishonored upon presentation for payment because the person has insufficient money or credit, or because the person stopped payment on the method of payment, the Secretary of State may refuse to register the person as an electronic notary public or, if the Secretary of State has registered the person as an electronic notary public, immediately revoke the person's registration. If, pursuant to this subsection, the Secretary of State refuses to register a person as an electronic notary public or revokes the registration of a person as an electronic notary public, the Secretary of State will notify the person of the refusal or revocation. A person whose registration is denied or revoked*

pursuant to this subsection must resubmit a registration as an electronic notary public pursuant to the provisions of this chapter and chapter 240 of NRS.

Sec. 13. 1. *If a person who is registering as an electronic notary public satisfies all of the requirements for such a registration pursuant to this chapter and chapter 240 of NRS, the Secretary of State will:*

(a) Approve the registration of the person as an electronic notary public;

(b) Cause the processing system maintained by the Office of the Secretary of State to be updated to indicate the registration of the person as an electronic notary public; and

(c) Notify the person that he or she has been registered as an electronic notary public.

2. *If a person who is registering as an electronic notary public does not satisfy all of the requirements for registration set forth in this chapter and chapter 240 of NRS, the Secretary of State may refuse to register the person as an electronic notary public. If the Secretary of State refuses to register a person as an electronic notary public pursuant to this subsection, the Secretary of State will notify the person of the refusal.*

3. *The registration of a person as an electronic notary public becomes effective at the time the processing system maintained by the Secretary of State has been updated pursuant to paragraph (b) of subsection 1 to indicate such a registration.*

Sec. 14. *A notary public who is registered by the Secretary of State as an electronic notary public retains the commission number assigned by the Secretary of State to the notary public.*

Sec. 15. 1. *Before performing an electronic notarial act by means of audio-visual communication, an electronic notary public shall confirm the identity of the principal by:*

(a) Personal knowledge;

(b) The oath of a credible witness who personally knows the principal and the notary public; or

(c) Each of the following:

(1) Remote presentation by the person of a government-issued identification credential that contains a photograph and the signature of the person;

(2) Credential analysis of the government-issued identification credential and the data thereon that satisfies the requirements of section 21 of this regulation; and

(3) A dynamic knowledge-based authentication assessment that satisfies the requirements of section 22 of this regulation or identity proofing in accordance with section 23 of this regulation.

2. If an electronic notary public is unable to determine that a credential presented by a principal is a valid identification of the principal or is unable to match the physical features of the principal with the credential presented by the principal, the electronic notary public must not take any further action to complete an electronic notarial act by using that credential to confirm the identity of the principal.

Sec. 16. *An electronic notary public shall maintain an accurate and reliable record of each electronic notarial act performed by the electronic notary public.*

Sec. 17. *An electronic notary public shall take reasonable steps to:*

1. Ensure the integrity, security and authenticity of each electronic notarial act performed by the electronic notary public;

2. Maintain a secure backup of the electronic journal kept by the electronic notary public in accordance with NRS 240.201;

3. Maintain a secure backup of each recording of an electronic notarial act performed by the electronic notary public which is made pursuant to NRS 240.1995; and

4. Ensure that any audio-video communication for the purpose of performing an electronic notarial act is secure from unauthorized access or interception.

Sec. 18. For the purposes of NRS 240.1993, an electronic notarial act using audio-video communication is performed for a person who is physically located outside the United States if the person is physically located outside the geographic boundaries of a state or commonwealth 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.

Sec. 19. An electronic notary public may perform an electronic notarial act using audio-video communication only if the electronic notary public and the principal agree to the performance of the electronic notarial act using audio-video communication.

Sec. 20. An electronic notary public who is performing an electronic notarial act using audio-video communication shall:

- 1. Identify the principal in accordance with section 15 of this regulation; and*
- 2. Identify the electronic document that is the subject of the electronic notarial act as the document on which the principal executed his or her signature.*

Sec. 21. 1. To conduct a credential analysis for the purpose of identifying the principal pursuant to NRS 240.1997 and sections 15 and 20 of this regulation, an electronic notary public shall use a reputable third-party vendor or software tool that:

(a) Demonstrates a proven credential analysis process that enables the electronic notary public to compare for consistency the information and photograph on a credential presented by a principal and the principal as viewed by the electronic notary public; and

(b) Employs a technology that:

(1) Requires a credential to pass a test of its authenticity that:

(I) Is consistent with sound commercial practices;

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

(III) Uses appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified; and

(IV) Uses information held or published by the issuer of the credential or another authoritative source, as available, to confirm the validity of the details of the credential; and

(2) Provides the output of the authenticity test to the electronic notary public.

2. If an electronic notary public is unable to validate a credential presented by a principal or determines that the information and photograph on the credential are not consistent with the principal as viewed by the electronic notary public, the electronic notary public must not:

(a) Complete the electronic notarial act; or

(b) Make any further attempt to complete an electronic notarial act for the principal by using the credential to confirm the identity of the principal.

Sec. 22. To conduct a dynamic knowledge-based authentication assessment for the purpose of identifying the principal pursuant to NRS 240.1997 and sections 15 and 20 of this regulation, an electronic notary public shall use a procedure that:

1. *Requires the principal to:*
 - (a) *Answer five questions concerning the principal that are drawn from public or private data sources and provide a minimum of five possible answers per question; and*
 - (b) *Obtain a passing score by answering correctly at least 80 percent of the questions within a period of 2 minutes;*
2. *If the principal does not obtain a passing score as required by paragraph (b) of subsection 1, authorizes the principal to make two additional attempts to obtain that passing score with the same electronic notary public within a 48-hour period but at least two of the questions previously answered by the principal must be replaced with different questions each time that the principal makes an additional attempt to obtain the passing score;*
3. *Confirms affirmatively whether the principal has correctly answered the questions; and*
4. *Keeps confidential the questions asked to the principal and the answers provided by the principal to the questions.*

Sec. 23. 1. *An electronic notary public may use a solution provider who is registered with the Secretary of State pursuant to sections 34 and 35 of this regulation to confirm the identity of a principal as required by NRS 240.1997 and section 15 of this regulation if the solution provider is approved by the Secretary of State to conduct identity proofing.*

2. *To apply for approval to conduct identity proofing, an applicant must submit a written application to the Secretary of State that identifies the identity proofing provided by the solution provider and includes evidence sufficient to demonstrate that the identity proofing provided by the solution provider meets or exceeds the accuracy of a dynamic knowledge-*

based authentication assessment that satisfies the requirements of section 22 of this regulation.

3. Upon receipt of an application submitted pursuant to subsection 2, the Secretary of State may:

(a) Request additional information from the applicant;

(b) Approve the application if the application is complete and the Secretary of State determines that the identity proofing provided by the solution provider meets or exceeds the accuracy of a dynamic knowledge-based authentication assessment that satisfies the requirements of section 22 of this regulation; or

(c) Reject the application if the application is incomplete or the Secretary of State determines that the identify proofing provided by the solution provider does not meet or exceed the accuracy of a dynamic knowledge-based authentication assessment that satisfies the requirements of section 22 of this regulation.

Sec. 24. 1. An electronic notary public who is performing an electronic notarial act using audio-video communication must start the performance of the electronic notarial act from the beginning, including, without limitation, confirming the identity of the principal in accordance with NRS 240.1997 and section 15 of this regulation, if, at any time during the performance of the electronic notarial act:

(a) The principal or the electronic notary public exits the session;

(b) The audio-video communication link is broken; or

(c) The electronic notary public believes that the process of completing the electronic notarial act has been compromised and cannot be completed because of the resolution or quality of the audio or video transmission, or both.

2. As used in this section, “session” means the performance of one or more electronic notarial acts using audio-video communication on a single set of electronic documents as a single event by a single electronic notary public with one or more principals and any applicable witness.

Sec. 25. An electronic notary public performing an electronic notarial act using audio-video communication and the solution provider whose electronic notarization solution is used to perform the electronic notarial act using audio-video communication shall ensure that the recording of the electronic notarial act made pursuant to NRS 240.1995 and any personally identifying information disclosed during the performance of the electronic notarial act is protected from unauthorized access.

Sec. 26. 1. An electronic notary public may use a solution provider to store the electronic journal of the electronic notary public and the recording made pursuant to NRS 240.1995 of an electronic notarial act performed using audio-video communication if the solution provider has registered with the Secretary of State pursuant to section 35 of this regulation and the registration is in active status.

2. Except as otherwise provided in this subsection, a solution provider that stores the electronic journal of an electronic notary public and the recording made pursuant to NRS 240.1995 of an electronic notarial act performed using audio-video communication must allow the electronic notary public sole control of his or her electronic journal and the

recording made pursuant to NRS 240.1995. The solution provider may allow access to the electronic journal of an electronic notary public or a recording made pursuant to NRS 240.1995 if the electronic notary public has authorized such access or the access to the electronic journal or recording is authorized pursuant to this chapter or chapter 240 of NRS.

3. As used in this section, “sole control” has the meaning ascribed to it in NRS 240.201.

Sec. 27. The recording made pursuant to NRS 240.1995 of an electronic notarial act performed using audio-video communication may be made available:

- 1. To the principal for whom the electronic notarial act was performed;*
- 2. To the Secretary of State;*
- 3. To a law enforcement or federal, state or local governmental agency in the course of an enforcement action or the performance of any lawful duty;*
- 4. Pursuant to a court order or subpoena;*
- 5. To the electronic notary public who performed the electronic notarial act for any purpose set forth in subsections 1 to 4, inclusive; or*
- 6. To any other person who is authorized by the parties to the electronic notarial act to obtain the recording.*

Sec. 28. For any authorized purpose and to ensure compliance with the provisions of this chapter and chapter 240 of NRS governing electronic notarial acts, the employer of an electronic notary public who performs an electronic notarial act using audio-video communication or the solution provider whose electronic notarization solution was used to perform such an electronic notarial act, or both the employer of the electronic notary public and the solution provider, may access:

- 1. The electronic seal of the electronic notary public;*
- 2. The electronic signature of the electronic notary public;*
- 3. If the electronic notary used an electronic notarization solution to perform the electronic notarial act, the electronic notarization solution; or*
- 4. The recording made pursuant to NRS 240.1995 of the electronic notarial act.*

Sec. 29. 1. Except as otherwise provided in this section, the electronic seal of an electronic notary public must include the information required to be set forth in a mechanical stamp pursuant to NRS 240.040 and must generally conform to the size and other requirements set forth in NRS 240.040 for a mechanical stamp.

2. After the electronic seal, electronic signature and electronic notarial certificate are affixed or attached to or logically associated with an electronic document and the electronic notarial act is complete, the electronic document must be rendered tamper-evident.

3. If an electronic notary public performs an electronic notarial act using audio-video communication, the electronic notary public must include adjacent to the electronic seal or in the electronic notarial certificate a notation indicating that the electronic notarial act was performed using audio-video communication. The notation required by this subsection must be the following statement or a substantially similar statement:

“Notarial act performed by audio-video communication.”

4. As used in this section, “tamper-evident” means that an electronic document on which an electronic notarial act is performed will display evidence of any change made to the electronic document after the performance of the electronic notarial act.

Sec. 30. *An electronic journal kept by an electronic notary public pursuant to NRS 240.201:*

1. Must not allow the electronic notary public or any other person to delete a record included in the electronic journal or alter the content or sequence of such a record after the record is entered into the electronic journal; and

2. Must be securely backed-up by the electronic notary public and the solution provider whose electronic notarization solution was used by the electronic notary public.

Sec. 31. *An electronic notary public shall not include in the electronic journal kept by the electronic notary public pursuant to NRS 240.201:*

1. The personally identifying information of any person unless such information is required to be included in the electronic journal pursuant to this chapter or chapter 240 of NRS.

2. The recording required by NRS 204.1995 for an electronic notarial act performed using audio-video communication.

Sec. 32. *An electronic notary public shall allow for the inspection of the electronic journal of the electronic notary public, as required by NRS 240.201.*

Sec. 33. *An electronic notary public shall not:*

1. Engage in any act prohibited by NRS 240.075.

2. Perform an electronic notarial act using audio-video communication while the electronic notary public is at a location outside this State.

3. Fail to record an electronic notarial act performed using audio-video communication as required by NRS 240.1995 or fail to keep such a recording in accordance with the requirements of NRS 240.1995.

4. Use an electronic seal or digital certificate that is invalid or fails to meet the requirements of this chapter or chapter 240 of NRS during the performance of an electronic notarial act.

5. Fail to notify the Secretary of State of a change in his or her electronic seal or digital certificate.

6. Use his or her electronic seal, alone or together with his or her electronic signature, except in the performance of an electronic notarial act.

7. Allow unauthorized access to the electronic journal kept by the electronic notary public pursuant to NRS 240.201, his or her electronic signature or his or her digital certificate, or to the electronic notarization solution used by the electronic notary public to perform an electronic notarial act.

8. Violate any other provision of this chapter or chapter 240 of NRS relating to the performance of an electronic notarial act.

Sec. 34. 1. A person shall not act as a solution provider unless the person is registered with the Secretary of State pursuant to this section and section 35 of this regulation and maintains a current state business license issued pursuant to chapter 76 of NRS at all times that an electronic notary public is using the electronic notarization solution of the solution provider.

2. To register with the Secretary of State as a solution provider, a person must submit a registration to the Secretary of State as an electronic document and include in the registration the following information:

(a) The legal name of the solution provider;

(b) The type of business organization of the solution provider;

(c) The mailing address and the physical address of the solution provider;

(d) The name and phone number of a contact person for the solution provider;

(e) The name of the electronic notarization solution provided by the solution provider;

(f) The name of the provider of the identity proofing, dynamic knowledge-based authentication assessment, credential analysis and digital certificate services for the solution provider;

(g) The business identification number assigned by the Secretary of State to the solution provider pursuant to NRS 225.082;

(h) A description of the technology used by the solution provider to ensure compliance with the provisions of this chapter and chapter 240 of NRS relating to the performance of electronic notarial acts;

(i) The plan of the solution provider for the retention, storage and disposition of documents, electronic journals kept pursuant to NRS 240.201, the recordings required by NRS 240.1995 of electronic notarial acts performed using audio-video communication and any other records pertaining to the performance of an electronic notarial act if, for any reason, the solution provider no longer makes its electronic notarization solution available to electronic notaries public; and

(j) A declaration that the electronic notarization solution provided by the solution provider complies with the laws of this State governing electronic notarial acts.

3. Notwithstanding any other provision of law, the information provided to the Secretary of State pursuant to paragraph (h) of subsection 2 by a person registering with the Secretary of State as a solution provider is confidential proprietary information of the solution provider and is not a public record.

Sec. 35. 1. The Secretary of State will register a solution provider if the electronic notarization solution provided by the solution provider meets all of the following requirements:

(a) Provides secure access to the electronic notarization solution by password or another secure means that identifies the electronic notary public accessing the electronic notarization solution.

(b) Uses a registry of persons registered as electronic notaries public maintained by the Secretary of State, if any, to verify that the registration of an electronic notary public logging into the electronic notarization solution to perform an electronic notarial act is in active status and prohibits a person whose registration as an electronic notary public is not in active status, as indicated in the registry maintained by the Secretary of State, if any, from beginning or completing an electronic notarial act using the electronic notarization solution.

(c) Provides for uninterrupted, continuous and simultaneous audio-video communication between an electronic notary public and a principal.

(d) Provides audio-video communication with a video resolution and audio quality that ensures that:

(1) An electronic notary public and a principal are able to see, hear and communicate with each other in real time; and

(2) An electronic notary public is able to match the appearance of a principal with the credential presented by the principal.

(e) Provides a secure communication link for audio-video communication that ensures that only the parties to an electronic notarial act and those persons authorized by each party to the electronic notarial act are part of the audio-video communication.

(f) Provides an electronic journal of electronic notarial acts that complies with the provisions of this chapter and chapter 240 of NRS governing the requirement for an electronic notary public to keep an electronic journal of each electronic notarial act.

(g) Provides for the recording of an electronic notarial act performed by audio-video communication that complies with NRS 240.1995 and sections 25 to 28, inclusive, of this regulation and that is of sufficient quality to ensure verification of the recorded electronic notarial act.

(h) Is capable of confirming that an electronic document presented for the performance of an electronic notarial act is the same electronic document on which the electronic notarial act was performed.

(i) Enables an electronic notary public to affix the wording of a notarial certificate required by NRS 240.1655, 240.166 to 240.167, inclusive, 240.1685 or 240.169, as applicable, and the electronic notary seal of the electronic notary public.

(j) Enables a person viewing an electronic document on which an electronic notarial act was performed to view the electronic signature and electronic seal of the electronic notary public who performed the electronic notarial act.

(k) Provides a method for determining whether an electronic document on which an electronic notarial act was performed has been altered after the electronic seal of the electronic notary public who performed the electronic notarial act has been affixed to the electronic document and the electronic notarial act was completed.

(l) Prevents unauthorized access to:

(1) An audio-video communication between an electronic notary public and a principal;
(2) The recording of an electronic notarial act required by NRS 240.1995 for an electronic notarial act performed using audio-video communication;

(3) Any personally identifying information used in a credential analysis, in identity proofing or in any other part of an audio-video communication, including, without limitation:

(I) A method of credential analysis and the output of that analysis;
(II) Any credential presented to an electronic notary public;
(III) The questions and answers used to conduct a dynamic knowledge-based authentication assessment pursuant to NRS 240.1997 and section 22 of this regulation;

(IV) Birthdates; and

(V) Social security numbers; and

(4) The electronic document on which an electronic notarial act was performed.

(m) Provides a method for generating a paper copy of the electronic journal of an electronic notary public and an electronic document on which an electronic notarial act was

performed, including, without limitation, the electronic notarial certificate for the electronic document, the electronic signature and electronic seal of the electronic notary public who performed the electronic notarial act and any other document associated with the electronic document.

2. If there is any change in an electronic notarization solution provided by a solution provider that affects the ability of an electronic notary public to comply with the requirements of this chapter or chapter 240 of NRS when performing an electronic notarial act, the solution provider must notify the Secretary of State of the change. Upon receiving notice of the change, the Secretary of State will determine whether the electronic notarization solution continues to satisfy the requirements of this chapter and chapter 240 of NRS. If the Secretary of State determines that the electronic notarization solution no longer satisfies the requirement of this chapter and chapter 240 of NRS, an electronic notary public must not use the electronic notarization solution to perform an electronic notarial act in this State.

3. As used in this section, “real time” means the actual span of uninterrupted, simultaneous communication during which all parts of an electronic notarial act using audio-video communication occur.

Sec. 36. A solution provider shall take reasonable steps to ensure that an electronic notary public using its electronic notarization solution is registered with the Secretary of State and is in compliance with the requirements of this chapter and chapter 240 of NRS for the performance of an electronic notarial act.

Sec. 37. *The penalties, prohibitions, liabilities, sanctions and remedies for the improper performance of an electronic notarial act are the same as provided by law for the improper performance of a notarial act that is not an electronic notarial act.*

Sec. 38. NAC 240.200 is hereby amended to read as follows:

240.200 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. 39. NAC 240.210 is hereby amended to read as follows:

240.210 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. 40. NAC 240.250 is hereby amended to read as follows:

240.250 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 an electronic notarial act 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 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. 41. NAC 240.270 is hereby amended to read as follows:

240.270 1. The Secretary of State will provide at least one course of study per month for the mandatory training of 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. ~~{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.

Sec. 42. NAC 240.400 is hereby amended to read as follows:

240.400 NAC 240.400 to 240.540, inclusive:

1. Govern all practice and procedure before the Secretary of State for the revocation of a notary public commission as provided in NRS 240.150 ~~†~~ *or the revocation of a registration as an electronic notary public.*
2. Must be liberally construed to secure just, speedy and economical determination of all issues presented to the Secretary of State and to effectuate the purposes of chapter 233B of NRS and NRS 240.010 to 240.150, inclusive.
3. Must not be construed as conflicting with any provisions of NRS as they pertain to the powers and duties of the Secretary of State, but rather must be construed as being in harmony with them.