

Proposed Regulations  
19 NYCRR, Chapter V, Subchapter E, Part 182  
Addition of Sections 182.2 – 182.11

Sec.

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## **182.2 Definitions**

For purposes of this Part, the following terms have the following meanings:

(a) “Notary Public” or “Notary” means an individual who meets the qualifications set forth in section 130 of the Executive Law and has been appointed by the secretary of state pursuant to section 131 of the Executive Law to perform notarial acts in accordance with procedures outlined in article 6 of the Executive Law and this Part.

(b) “Electronic notary public” or “electronic notary” means a notary public or notary who has registered with the secretary of state the capability of performing electronic notarial acts in accordance with section 135-c of the Executive Law and this Part.

(c) “Notarial act” means any official act that a notary public is authorized to perform by law, including, but not limited to:

(1) administering oaths and affirmations;

(2) taking affidavits and depositions;

(3) receiving and certifying acknowledgments or proof of such written instruments as deeds, mortgages, powers of attorney and other instruments in writing;

(4) demanding acceptance or payment of foreign and inland bills of exchange, promissory notes and obligations in writing, and protesting the same for non-acceptance or non-payment, as the case may require; or

(5) an electronic notarial act.

(d) “Electronic notarial act” means an official act by a notary public, physically present in the state of New York, on or involving an electronic record and using means authorized by this Part.

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

(f) “Electronic record” means information that is created, generated, sent, communicated, received, or stored by electronic means.

(g) “Identity verification” means the use of an authentication process by which a notary public validates the identity of any principal and/or individual present for a notarial act.

(h) “Credential analysis” means a process or service operating according to the standards adopted in this Part, through which a third-party affirms the validity of government-issued identification through review of public and proprietary data sources.

(i) “Credential service provider” means a third party trusted entity that issues or registers subscriber authenticators and issues electronic credentials to subscribers.

(j) “Identity proofing” means a process by which a credential service provider collects, validates, and verifies information about a person.

(k) “Personal appearance” means presence at a transaction for which a notarial act is required, either physically or electronically, in a manner that meets all requirements imposed by this Part.

(l) “Communication technology” means an electronic device or process that: (1) allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and (2) when necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(m) “Electronic signature” has the same meaning set forth in subdivision 3 of section 302 of the State Technology Law, except that any electronic signature affixed by an electronic notary in the performance of an electronic notarial act must also meet the additional requirements outlined in this Part.

(n) “Public key infrastructure” means the architecture, organization, techniques, practices, and procedures that collectively support the implementation and operation of a certificate-based asymmetric or public/private key cryptographic system.

(o) “Public/private key or asymmetric cryptographic system” means a system by which two mathematically linked keys are generated, one a publicly available validation key and the other a private key that cannot be deduced from the public key.

(p) “Principal” means an individual:

(1) whose signature is reflected on a record that is notarized;

(2) who has taken an oath or affirmation administered by a notary public;

(3) whose signature is reflected on a record that is notarized after the individual has taken an oath or affirmation administered by a notary public; or

(4) for purposes of this Part, any individual who intends to engage in any of these acts.

### **182.3 Requirements for Notaries**

(a) All notaries public who wish to perform notarial acts in New York State, must:

(1) satisfy the requirements of sections 130 and 131 of the Executive Law;

(2) obtain satisfactory evidence of the identity of any principal or other individual appearing before the notary in a manner authorized by this Part;

(3) require the personal appearance of all parties to any transaction for which a notarial act is required for the duration of any such transaction, except acts performed as authorized and in conformity with this Part and section 135-c of Executive Law unless a law expressly excludes such authorization;

(4) administer any oath or affirmation as required by the law governing the transaction for which the notarial act is required and, regardless of the county of qualification, include and affix to each instrument requiring an oath or affirmation such notary public's official number;

(5) disqualify themselves from performing notarial acts for transactions in which the notary is a party or directly and pecuniarily interested in the transaction;

(6) refuse to perform a notarial act when the requirements of this Part are not met, or if the notary is not satisfied that the official record or the presented record evidences the individual's capacity to act as the representative on the record presented for notarization;

(7) maintain records as required by this Part; and

(8) within five days after a change of name, address, or e-mail address, transmit to the secretary of state a notice of the change, signed with the notary public's official signature.

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

(1) the principal is competent or has the capacity to execute a record; and/or

(2) the principal's signature is knowingly and voluntarily made.

### **182.4 Additional Requirements for Electronic Notaries**

(a) In addition to the requirements set forth in section 182.3 of this Part, all notaries public who wish to perform electronic notarial acts in New York State must:

(1) register the capability to notarize electronically with the secretary of state in compliance with this Part;

- (2) use only those vendors or providers who comply with the standards outlined in this Part and any communication or reporting relating to those standards as required by the secretary of state;
- (3) be physically located within the boundaries of New York when performing electronic notarial acts;
- (4) use a network that permits location detection when performing an electronic notarial act;
- (5) affix a reliable electronic signature to electronic records. An electronic signature is reliable if it is:
  - (i) unique to the notary public;
  - (ii) attached or logically associated with an electronic record by use of a digital certificate that utilizes public key infrastructure as defined in this Part and is capable of independent verification;
  - (iii) retained under the notary's sole control; and
  - (iv) linked to the data in such a manner that any subsequent alterations to the underlying record are detectable and may invalidate the electronic notarial act;
- (6) use their designated electronic signature only for the purpose of performing electronic notarial acts or as otherwise specified in this Part;
- (7) ensure the remote online notarial certificate for an electronic notarial act clearly states that the person making the acknowledgement or making the oath appeared using communication technology;
- (8) for execution of any instrument in writing, if under applicable law the record may be signed with an electronic signature, confirm that such instrument is the same instrument in which the principal made a statement or on which the principal executed a signature;
- (9) if the principal is located outside of the United States, verify that the record or subject of the notarial act:
  - (i) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or
  - (ii) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States;
- (10) In complying with paragraph (8) of subdivision (a) of section 182.3 of this Part ensure that the notice of change is electronically transmitted to the secretary of state, signed with the notary public's designated electronic signature;
- (11) for any update to the information required to be submitted by a notary public to register the capability to perform an electronic notarial act, make such update prior to performance of any electronic notarial act; and

(b) The notary public shall not disclose any access information used to affix the electronic notary's signature and seal except when requested by the secretary of state or a designee, or judicial subpoena, and with reasonable precautions, electronic document preparation and transmission vendors. Control of security aspects such as but not limited to passwords, token devices, biometrics, PINS, phrases, software on protected hardware shall remain under the sole control of the notary public.

### **182.5 Satisfactory Evidence of Identity**

(a) For any individual who makes a personal appearance before a notary public, including but not limited to any principal seeking a notarial act, and any witness thereto, the notary must obtain satisfactory evidence of the identity of each such individual that complies with the requirements of this Part.

(b) For any individual who physically appears before a notary public, satisfactory evidence of identity requires identity verification through:

(1) presentation of the back and front of an identification card issued by a governmental agency provided the card:

(i) is valid and current;

(ii) contains the photographic image of the bearer;

(iii) has an accurate physical description of the bearer, if applicable; and

(iv) includes the signature of the bearer;

(2) at least two current documents issued by an institution, business entity, or federal or state government with at least the individual's signature;

(3) attestation by the notary that the individual is personally known to them; or

(4) the oath or affirmation of a credible witness who is personally known to the individual and notary.

(c) For any individual who appears before an electronic notary public using communication technology, and who is not personally known to the notary public, satisfactory evidence of identity requires all of the following:

(1) identity verification as outlined in subdivision (b) of this section, utilizing communication technology that meets the requirements set forth in this Part;

(2) credential analysis that meets the requirements set forth in this Part; and

(3) identity proofing by a third-party service provider that meets the requirements set forth in this Part.

(d) Provided that all other requirements of this Part are met, attestation by an electronic notary public that an individual appearing through communication technology is personally known to them is satisfactory evidence of identity for electronic notarial acts.

### **182.6 Credential Analysis**

Credential analysis must conform to all standards set forth in this section.

(a) Credential analysis must be performed by a third-party service provider who has provided evidence to the online notary public of the provider's ability to satisfy the requirements set forth in this rule.

(b) Credential analysis must utilize public or private data sources to confirm the validity of an identification credential and must, at a minimum:

(1) use automated software processes to aid the online notary public in verifying the identity of a remotely located individual;

(2) ensure that the identification credential passes an authenticity test, consistent with sound commercial practices that:

(i) uses technologies consistent with the requirements of this Part to confirm the integrity of visual, physical, or cryptographic security features;

(ii) uses technologies consistent with the requirements of this Part to confirm that the identification credential is not fraudulent or inappropriately modified;

(iii) uses information held or published by the issuing source or an authoritative source, as available, to confirm the validity of identification credential details; and

(iv) provides output of the authenticity test to the online notary public.

### **182.7 Identity Proofing**

(a) Identity proofing must meet, at minimum, the Identity Assurance Level 2 standard as outlined in the Digital Identity Guidelines of the National Institute of Standards and Technology, as referenced in subdivision (b) of this section, or any industry accepted standard that is at least as secure, or more secure, than that standard.

(b) Incorporation by reference. The Identity Assurance Level 2 standard, as outlined in the Digital Identity Guidelines of the National Institute of Standards and Technology, United States Department of Commerce, document SP 800-63-3, Revision 3, dated June 2017 and includes updates as of 03-02-2020, is hereby incorporated by reference. This publication is available free of charge from:

<https://doi.org/10.6028/NIST.SP.800-63-3>

Copies of said publication may be obtained from the publisher at the following address:

National Institute of Standards and Technology  
Attn: Applied Cybersecurity Division, Information Technology Laboratory  
100 Bureau Drive (Mail Stop 2000) Gaithersburg, MD 20899-2000  
Email: [dig-comments@nist.gov](mailto:dig-comments@nist.gov)

Copies of said publication are available for public inspection and copying at the Office of the New York State Department of State located at One Commerce Plaza, 99 Washington Avenue, Albany, NY 12231-0001.

### **182.8 Communication Technology**

(a) The communication technology used to perform electronic notarial acts must:

(1) permit sufficient audio and visual clarity to enable the notary and the person(s) for whom a notarial act is requested to see and speak to each other simultaneously through live, real-time transmission throughout the duration of the notarial act, through and including identity verification, identity proofing, and signature of any parties present during the transaction without interruption;

(2) permit sufficient visual clarity to enable the notary to view, read, and capture the front and back of any identification card presented as verification of identity;

(3) include a signal transmission secure from interception through lawful means by anyone other than the parties to the notarial act;

(4) include a process of reproduction that does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes;

(5) provide some manner of ensuring that the electronic record that is presented for electronic notarization is the same record electronically signed by the principal; and

(6) permit recording and archiving of the audio-video communication session.

(b) The electronic notary shall keep a copy of the recording of the video and audio conference and a notation of the type of any other identification used. The recording shall be maintained for a period of at least ten years from the date of transaction.

### **182.9 Recordkeeping and Reporting**

(a) All notaries public must maintain records sufficient to document compliance with the requirements of sections 130 and 135-c of the Executive Law and the duties and responsibilities of a notary public and/or electronic notary public as outlined in this Part. Such records shall be made contemporaneously with the performance of the notarial act and must include:

- (1) the date, approximate time, and type of notarial acts performed;
  - (2) the name and address of any individuals for whom a notarial act was performed;
  - (3) the number and type of notarial services provided;
  - (4) the type of credential used to identify the principal;
  - (5) the verification procedures used for any personal appearance before the notary public; and
  - (6) for electronic notarial acts, identification of the communication technology, certification authority, and verification providers used.
- (b) Any records maintained by a notary public pursuant to this Part must be retained by the notary public for at least ten years.
- (c) Any records retained by a notary public pursuant to this Part must be capable of being produced to the secretary of state and others as necessary in relation to the performance of the notary public's obligations pursuant to the Executive Law and this Part.

#### **182.10 Applications, Registrations and Renewals**

- (a) Prior to performing any notarial acts, a notary public must be appointed and commissioned by the secretary of state for a four-year term in accordance with the requirements and procedures set forth in Executive Law sections 130 and 131 and must provide all information required by the application form prescribed by the secretary of state.
- (b) No commissioned notary public may perform electronic notarial acts until they have registered the capability to notarize electronically on a form prescribed the secretary of state, including, in addition to any other information prescribed by the secretary of state, the following information:
- (1) the notary's name as currently commissioned and complete mailing address;
  - (2) the expiration date of the notary's commission and signature of the commissioned notary;
  - (3) the notary's email address;
  - (4) the description of the electronic technology or technologies to be used in attaching the notary's electronic signature to the electronic record, which may be effectuated by registration of vendor account information from a vendor who meets the requirements of this Part, in the manner required by the department of state;
  - (5) an exemplar of the notary's electronic signature, which shall be provided through and in the manner required by the department of state's registration system using the notary's selected signature vendor and shall contain the notary's name and any necessary instructions, authorizations, or techniques that allow the notary's electronic signature to be read and verified.



(c) A notary public may apply for reappointment within 90 days of expiration of their commission, provided that the notary public continues to meet the requirements set forth in sections 130 and 131 of the Executive Law and this Part.

(d) When any notary public who has registered to perform electronic notarial acts applies for reappointment, the electronic notary public must provide verification of the accuracy of all information on file with the secretary of state and affirm that such notary public is otherwise in compliance with all requirements of this Part.

(e) Any notary public who has failed to comply with any of the requirements of this Part relating to notarial or electronic notarial acts shall not be eligible for reappointment.

(f) All applications for appointment and reappointment of notaries public, and all registrations of capability to perform electronic notarial acts, shall be in the form and manner prescribed by the secretary of state and provided through the department of state's division of licensing.

### **182.11 Fees**

(a) Applicants for a notary public commission must submit a non-refundable application fee of sixty dollars, which fee shall be used and distributed in accordance with section 131 of the Executive Law.

(b) Registrants for electronic notarial acts must submit a non-refundable registration fee of sixty dollars to the secretary of state with their registration.

(c) Notaries public who wish to renew their notary public commission must pay a non-refundable fee of sixty dollars, which fee shall be used and distributed in accordance with section 131 of the Executive Law.

(d) Notary Public applicants who must take a written exam must submit a fee of fifteen dollars for each examination taken, payable on the date of the examination.

(e) The fee for change requests and Duplicate License/Registration Requests shall be ten dollars, payable to the secretary of state at the time of submission of the request.

(f) A notary public shall be entitled to a fee for notarial acts as set forth in section 136 of the Executive Law.

(g) An electronic notary public shall be entitled to a fee of twenty-five dollars for an electronic notarial act, which shall be inclusive of all costs incurred by the notary public.

(h) All application, renewal, and registration fees required to be paid pursuant to this section shall be transmitted in a manner prescribed by the secretary of state.