

**Legal Notice**  
**Notice of Rule Making Hearing**  
**Secretary of State**

Notice is hereby given that the Secretary of State will hold a rulemaking hearing on July 12, 2023 at 10:00 A.M. at Center on N, 1221 N St, 2<sup>nd</sup> Floor Conference Room, Lincoln, Nebraska, to receive public testimony on proposed regulations relating to Notaries Public, Electronic Notaries Public, and Online Notaries Public. The purpose is to amend regulations regarding Notaries Public, Electronic Notaries Public, and Online Notaries Public.

Copies of the proposed rules and regulations, and the description, including an estimated quantification of the fiscal impact on state agencies, political subdivisions, and persons being regulated are available at the Office of the Secretary of State, 1201 N. Street, Suite 120, Lincoln, Nebraska, 68509.

All interested persons are invited to attend and testify at the hearing. Interested persons may also submit written comments prior to the hearing, which shall be made a part of the hearing record at the time of the hearing. Written comments should be directed to David L. Wilson Jr, Associate General Counsel, Secretary of State's Office, 1201 N. Street, Suite 120, Lincoln, Nebraska, 68509, FAX (402) 471-2530, email [david.wilson@nebraska.gov](mailto:david.wilson@nebraska.gov). Comments may also be posted on-line through the Secretary of State's website. To view a copy of the proposed rule or to comment on-line, go to: <http://www.sos.ne.gov/rules-and-regs/regtrack/index.cgi>.

If auxiliary aids or reasonable accommodations are needed for attendance at the hearing, please call the Secretary of State's Office at (402) 471-4071. For persons with hearing/speech impairments, please call the Nebraska Relay System at (800) 833-7352 (TDD) or (800) 833-0320 (voice). Advance notice of at least seven days is needed when requesting an interpreter.

This notice is provided pursuant to the Administrative Procedure Act.

**NEBRASKA SECRETARY OF STATE ♦ ROBERT B. EVNEN**  
 1201 N STREET, SUITE 120 • LINCOLN, NE • 68508  
**BUSINESS SERVICES DIVISION**

**FISCAL IMPACT STATEMENT**

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**Agency:** Nebraska Secretary of State  
**Regulations:** Title 433 Chapters 6, 7, & 8  
**Subject:** Notaries Public, Electronic Notaries Public, and Online Notaries Public

<u>TYPE OF FISCAL IMPACT</u>			
	<b>State Agency</b>	<b>Political Subdivision</b>	<b>Regulated Public</b>
<b>No Fiscal Impact</b>		X	
<b>Increased Costs</b>			
<b>Decreased Costs</b>			X
<b>Increased Revenue</b>			
<b>Decreased Revenue</b>	X		
<b>Indeterminable</b>			

**DESCRIPTION OF IMPACT**

**STATE AGENCY:**

The fee to change the name on a commission and the duplicate commission fee are being eliminated. Additionally, applicants will not be required to reapply to take the second and third notary public examination, should they fail the first examination. It is anticipated that these changes will result in decreased cost to the regulated public and decreased revenue to the state in the amount of \$7500.

**POLITICAL SUBDIVISION:**

No fiscal impact.

**REGULATED PUBLIC:**

The fee to change the name on a commission and the duplicate commission fee are being eliminated. Additionally, applicants will not be required to reapply to take the second and third notary public examination, should they fail the first examination. It is anticipated that these

changes will result in decreased cost to the regulated public and decreased revenue to the state in the amount of \$7500.

## TITLE 433 – SECRETARY OF STATE

### CHAPTER 6 –NOTARIES PUBLIC

#### 001. DEFINITIONS.

For purposes of Chapter 6 of these regulations:

001.01 Act means Neb. Rev. Stat. §§64-101 through 64-118.

001.02 Applicant means a person who has submitted any of the documents listed in Section 3.

001.03 Application means both the initial and renewal application for Notary Public.

001.04 Form means and includes s an application submitted on paper or an application submitted electronically in a digital format approved by the Secretary.

001.05 Malfeasance in office ~~occurs~~ means when a Notary Public (1) fails to follow the requirements and procedures for Notarial acts provided for in statute under Chapter 64, Articles 1 and 2, and this administrative code, (2) fails to respond to written communications or requests from the Secretary, or (3) being convicted of a felony or other crime involving fraud or dishonesty within the last five (5) years.

001.06 Nebraska employer means an entity with an office or regular place of business within the physical boundaries of Nebraska. The Secretary will use a US Postal Service address to determine the physical location of the business.

001.07 Notarial act means an act which the law and regulations of this State authorize Notaries Public of this State to perform, including the administering of oaths and affirmations, taking proof of execution and acknowledgments of instruments, and attesting documents.

001.08 Notarial certificate or acknowledgement means the section at the end of a document where a Notary Public verifies by notarization that the signor of the document presented satisfactory evidence of identity, appeared in the Notary's presence, and that he or she actually signed the document.

001.09 ~~“Notary Public”~~ means a person commissioned as a notary public under the Act and Neb. Rev. Stat. § 64-119.

001.10 Regular place of work or business in Nebraska means any place where any person is to work, is working, or customarily works, for gain or reward within the physical boundaries of Nebraska.

001.11 Resident means that the applicant considers Nebraska his or her permanent home, or the place to which he or she intends to return after a period of absence. To meet the residency requirement the applicant must live in Nebraska for more than six (6) months out of the year.

001.12 Secretary means the Secretary of State and his or her designated staff.

Citation: Neb. Rev. Stat. §§64-101 through 64-118.

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## 002. NOTARIAL ACTS.

### 002.01 Document.

002.01(A) The Notarial certificate or acknowledgement must be completed in its entirety including dates, state and county of notarial act.

002.01(B) Blank or incomplete documents should not be notarized.

002.01(C) Notaries Public may not post-date or pre-date a document.

### 002.02 Seal.

002.02(A) Notaries Public must affix a clear and legible impression of his or her stamp to a document. The seal and signature may not be affixed over printed material or other signatures on the document.

002.02(B) Notaries Public must obtain a new seal each time the commission is renewed which includes the new commission expiration dates.

002.02(C) Notary commissions are issued to an individual regardless of whether or not another business or entity paid the notary application fee, bond, or seal.

002.02(D) The seal should be secured and only accessible by the Notary Public.

### 002.03 Signature.

002.03(A) The signature on the most recent application or bond, ~~whether on an Initial Application for Notary Public Commission, Renewal Application for Notary Public Commission or Notary Public Request to Change Record~~, will be used for verification;

therefore the Notary Public should always sign consistently with his or her application or bond signature.

002.04 Notaries Public must be aware of the condition of the signor. Special attention should be given when asked to notarize the signature of a minor child or persons that might not have the capability of understanding the document that they are signing. If the Notary Public reasonably believes the signor does not understand the document, they should refuse to notarize.

002.05 Notaries Public cannot refuse to provide services on the basis of race, color, national origin, religion, sex (including pregnancy), disability, or marital status.

Citation: Neb. Rev. Stat. §§64-101 through 64-118.

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### 003. APPLICATIONS AND OTHER FORMS.

~~003.01 The following forms are required to obtain and maintain a Notary Public commission under the Act:~~

~~003.01(A) Initial Application for Notary Public Commission;~~

~~003.01(B) U.S. Citizenship Attestation Form;~~

~~003.01(C) Bond Form;~~

~~003.01(D) Renewal Application for Notary Public Commission;~~

~~003.01(E) Evidence of Employment in Nebraska;~~

~~003.01(F) Notary Public Request to Change Record; and~~

~~003.01(G) Bond Rider.~~

~~003.02 A \$15,000 surety bond is required and must be concurrent with the Notary Public commission term.~~

~~003.03 The forms required to obtain and maintain a Notary Public commission listed in this section will be made available to all applicants on the Secretary of State's website or upon request.~~

Citation: Neb. Rev. Stat. §64-102 and §64-109.

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#### 004. COMMISSION REQUIREMENTS.

004.01 Before being considered by the Secretary, every initial application for a Notary Public commission must include the following information and meet the following requirements:

004.01(A) All questions on the application form(s) must be answered;

004.01(B) A fee of \$30 must be submitted;

004.01(C) A passing examination score;

004.01(D) Submission of a ~~license~~ surety bond for \$15,000;

004.01(E) U.S. Citizenship Attestation Form; and

004.01(F) ~~Non-resident~~ Evidence of Employment in Nebraska Form (if applicable).

004.02 Renewal applications must be received no later than the date the commission expires. ~~If the commission expiration date falls on a weekend or holiday the renewal must be received prior to that expiration date.~~ If received after the expiration date the renewal will be considered an initial application. A renewal application must include the following:

004.02(A) Notary Public Commission Renewal Form;

004.02(B) A fee of \$30;

004.02(C) A bond form or bond rider that updates the initial bond;

004.02(D) U.S. Citizenship Attestation Form; and

004.02(E) ~~Non-resident~~ Evidence of Employment in Nebraska Form (if applicable).

004.03 No appointment will be made if the applicant has been convicted of a felony unless a full pardon has been granted ~~by the Nebraska Board of Pardons.~~

004.04 No appointment will be made if the applicant has been convicted of a crime involving fraud or dishonesty within the last five (5) years unless a full pardon has been granted ~~by the Nebraska Board of Pardons.~~

004.04(A) A “crime involving fraud or dishonesty” means a violation of, or a conspiracy to violate, a civil or criminal law involving fraud, dishonesty, bribery, perjury, larceny, theft, robbery, extortion, forgery, counterfeiting, embezzlement, misappropriation of property, or any other offense adversely affecting such person's fitness to serve as a Notary Public.

004.04B “Conviction within the last five (5) years” means being convicted by a court of law within the last five (5) years from the date the application is received.

004.05 An applicant must be a resident of the State of Nebraska or (1) reside in one of the following states: Colorado, Iowa, Kansas, Missouri, South Dakota, or Wyoming and (2) maintain a regular place of work or business in Nebraska.

004.05(A) Non-resident applicants will be required to submit the form titled "Evidence of Employment in Nebraska" listed under Section 003.01(E).

004.05(B) If an applicant is self-employed a written explanation must be attached to the "Evidence of Employment in Nebraska" form noted above.

Citation: Neb. Rev. Stat. §§64-101 through 64-104.

## 005. CHANGES TO NOTARY PUBLIC COMMISSION INFORMATION.

### 005.01 Name Change.

005.01(A) A Notary Public may continue to use his or her current Notary Commission as it was issued until the expiration or termination of such commission. The Notary Public must continue to sign his or her name using the name as listed on the commission certificate.

005.01(B) A Notary Public who has changed his or her name during his or her commission, may update his or her name on his or her Notary Commission by filling out and submitting the “Notary Public Request to Change Record” form along with a new bond form or bond rider that updates the initial bond with his or her new name.~~apply for a new commission under his or her new name by following the procedures set forth in subsection 005.04~~

005.01(B)(1) Upon receiving a new commission certificate with his or her new name, the Notary Public must obtain a new seal.

005.01(B)(2) The term of the Notary Public commission will not be changed or extended as a result of the name change.

### 005.02 Address Change.

005.02(A) A Notary Public must update his or her address when moving by filling out and submitting the "Notary Public Request to Change Record" form within 45 days of moving.

005.02(B) No fee will be assessed for updating address information.

### 005.03 Employment Change.



005.03(A) If a non-resident Notary Public is terminated from a regular place of work or business in Nebraska, he or she must relinquish his or her Notary Public commission by returning the commission certificate and seal to the Secretary.

~~005.04 Signature or Name Change Process:~~

~~005.04(A) A Notary Public who has changed his or her signature or name may be issued a new commission with the updated signature or name by submitting a “Change of Signature or Name Application for a Notary Public” form to the Secretary. If the name or signature change occurs within thirty days prior to the expiration of the Notary Public’s commission, the Notary Public does not need to submit the “Change of Signature or Name Application for a Notary Public” form but should instead include the name or signature change on his or her renewal application.~~

~~005.04(B) A “Change of Signature or Name Application for A Notary Public” application will be considered a new application and the Notary Public must meet all the requirements and qualifications for a Notary Public commission, except that the Notary Public will not be required to take the written examination.~~

005.05 Criminal Conviction Reporting.

005.05(A) A Notary Public who is convicted of a felony or crime involving fraud or dishonesty during his or her commission term must notify the Secretary of this conviction to the Secretary in writing by filling out and submitting the “Notary Public Request to Change Record” within forty-five (45) days after the conviction occurs.

Citation: Neb. Rev. Stat. §64-101, §64-105.04, and §64-114.

006. NOTARY PUBLIC EXAMINATION.

006.01 The Notary Public Examination will consist of questions aimed at determining whether the applicant has the reasonably necessary knowledge, experience, and competency to engage in and perform the duties of a Notary Public. An applicant must score 85% or better to pass the exam.

006.01(A) Knowledge of the Notary Public Act and laws related to or affecting notarial work, including but not limited to:

006.01(A)(1) Provisions of Neb. Rev. Stat. §§ 64-101 through 64-118;

006.01(A)(2) Uniform Recognition of Acknowledgements Act Neb. Rev. Stat §§64-

209 through 64-215, and any other relevant statutes; and

006.01(A)(3) These Rules and Regulations.

006.02 The written examination will be an open resources test. ~~sent to the applicant upon receipt of the \$30.00 fee and a completed application.~~

006.03 ~~If an Applicant fails the examination, the application will be denied. An Applicant who fails the examination may reapply after waiting thirty (30) days, including submitting a new application, paying the application fee, and passing the exam. Each applicant shall have three (3) attempts to take and pass the Notary Public Examination. An applicant who fails the second exam attempt must wait thirty (30) days before taking the third and final exam. An Applicant who fails the examination three (3) times will be considered incompetent to be receive a Notary Public commission in the State of Nebraska, and will not be eligible to take the exam again.~~

006.03(A) A passing exam score will be valid for ~~2 years~~ 90 days from the date of examination.

006.03(B) If a passing exam score is not used within ~~2 years~~ 90 days the applicant only has the remainder of prior opportunities to retake the exam.

006.04 The examination may be completed electronically if authorized by the Secretary.

Citation: Neb. Rev. Stat. §64-101.01.

## 007. ALLEGED MALFEASANCE AGAINST NOTARIES PUBLIC.

007.01 In investigating an alleged malfeasance by a Notary Public, the Secretary must consider the totality of the offense, facts, and circumstances in each individual case.

007.02 Factors Considered.

007.02(A) While evaluating an alleged malfeasance to determine if it should be set for hearing or recommend to a stipulation process, the Secretary may consider a variety of factors, including, but not limited to, the following:

007.02(A)(1) Nature and severity of the act, offense, or crime under consideration;

007.02(A)(2) Number and/or variety of current violations;

007.02(A)(3) Evidence pertaining to the requisite honesty, credibility, truthfulness, and integrity of the Notary Public;

007.02(A)(4) Actual or potential harm to the general public, group, individual, or customer;

007.02(A)(5) History of complaints received by the Secretary; and

007.02(A)(6) Prior disciplinary record or warning from the Secretary.

#### 007.03 Discipline.

007.03(A) Stipulations are a voluntary agreement between the Secretary and Notary Public. A stipulation will be sought in lieu of setting a hearing to simplify the discipline process and provide cost savings to the Secretary.

007.03(A)(1) Stipulations will include the following: (i) statement of facts, (ii) acknowledgment of malfeasance, and (iii) a penalty.

007.03(A)(2) Stipulations must be in writing and signed by the Secretary and Notary Public.

007.03(B) Total Revocation means the Notary Public commission is revoked and cannot ever be reinstated.

007.03(B)(1) The following, nonexclusive list of acts of malfeasance will likely result in the total revocation of a Notary Public commission:

007.03(B)(1)(a) The signor was not in the physical presence of the Notary Public at the time of the Notarial act;

007.03(B)(1)(b) The signor was not personally known to the Notary Public or identified by the Notary Public through satisfactory evidence during the Notarial act;

007.03(B)(1)(c) A Notary Public engaged in the unauthorized practice of law. This would include using the term "notario publico" or any non-English equivalent term in a manner which misrepresents the authority of the Notary Public;

007.03(B)(1)(d) A Notary Public permitting another person to use the Notary Public's official seal or official seal embosser;

007.03(B)(1)(e) A Notary Public being convicted of a felony or crime involving fraud or dishonesty while commissioned; and

007.03(B)(1)(f) A Notary Public fails to respond to written communications or requests from the Secretary within thirty (30) days from the date the written communication or request was sent.

007.03(B)(2) If revoked the Notary Public commission and seal must be returned to the Secretary's office.

007.03(C) Temporary Revocation means a revocation of the Notary Public commission for as little as one month or as long as 4 years.

007.03(C)(1) The following, nonexclusive list of acts of malfeasance will likely result in the temporary revocation of a Notary Public commission:

007.03(C)(1)(a) Notarizing a document in which the Notary Public has a personal interest;

007.03(C)(1)(b) A Notary Public making a materially false statement on the application; and

007.03(C)(1)(c) Failure of the Notary Public to maintain the required bond.

007.03(C)(2) During the revocation the Notary commission and seal must be returned to the Secretary's office.

007.03(D) An Admonishment will be issued to a Notary Public and notated in his or her paper and electronic file when the Secretary feels that the alleged malfeasance rises to the level of warning but not revocation.

007.03(D)(1) The following, nonexclusive list of acts of malfeasance will likely result in an official warning to the Notary Public:

007.03(D)(1)(a) A Notary Public overlooks changing the County or State of the Notarial document; and

1b 007.03(D)(1)(b) A Notary Public Notarizes a document with blanks.

007.03(D)(2) An official admonishment will not hinder the Notary Public from performing his or her duties.

Citation: Neb. Rev. Stat. §§ 64-105, 64-105.01, and 64-113.

## 008. FEES.

008.01 The application fee is \$30.00.

~~008.02 The fee to change the name on a commission is \$30.00.~~

~~008.03 Duplicate commissions will be provided at a cost of \$15.00.~~

008.04 Notaries Public may charge the following fees for his or her services:

008.04(A) For each protest: \$1.00; For recording the same, \$2.00;

008.04(B) For each notice of protest: \$2.00;

008.04(C) For taking affidavits and seal: \$2.00;

008.04(D) For administering oath or affirmation: \$2.00;

008.04(E) For each certificate and seal: \$5.00; and

008.04(F) For each mile traveled in serving notice based on the rate established by the Department of Administrative Services

Citation: Neb. Rev. Stat. §33-102 and 33-133.

## TITLE 433 – SECRETARY OF STATE

### CHAPTER 7 – ELECTRONIC NOTARIES PUBLIC

#### 001. SCOPE.

001.01 The Rules in this Chapter implement the Electronic Notary Public Act, Neb. Rev. Stat. §§ 64-301 through 64-317.

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#### 002. DEFINITIONS.

In addition to terms defined in the Electronic Notary Public Act, the following definitions apply for purposes of Chapter 7 of these regulations:

002.01 "Applicant" means a person applying for registration as a Nebraska electronic notary public.

002.02 "Approved Electronic Notary Solution Provider" means a person or entity approved to provide an Electronic Notarization System by the Secretary pursuant to the Electronic Notary Public Act.

002.03 "Biometric Authentication" means proving the identity of a user by verification of the user's identity through technologies that measure and analyze one or more human physiological or behavioral characteristics of the user in order to access and use an Electronic Notarization System. Biometric Authentication technologies include fingerprint scanning devices, retinal scanning devices, and handwriting analysis devices.

002.04 "Electronic Notarization System" means a set of applications, programs, hardware, software, or technology designed to enable an electronic notary public to perform electronic notarizations.

002.05 "Independently Verifiable" means capable of government or third-party authentication of a notarial act, a notary's identity, and a Notary Public's relevant authority.

002.06 "Notary Public" means a person commissioned as a notary public under Neb. Rev. Stat. §§ 64-101 to 64-119.

002.07 "Password Authentication" means the user enters a secret word, phrase, or symbol set in order to access and use an Electronic Notarization System.

002.08 "Secretary" means the Nebraska Secretary of State and his or her designated staff.

002.09 "Token Authentication" means the use of a physical device in addition to a password or personal identification number ("PIN" ) in order to access and use an Electronic Notarization System. Physical devices used in Token Authentication technologies include magnetic cards or "smart cards" and Universal Serial Bus (USB) memory sticks or "USB keys".

002.10 "Under his or her exclusive control", for the purposes of the Secretary's interpretation of Neb. Rev. Stat. § 64-310, means "under the electronic notary public's sole control" as defined in this Chapter.

002.11 "Under the electronic notary public's sole control" means accessible by and attributable solely to the electronic notary public to the exclusion of all other persons and entities, either through being in the direct physical custody of the electronic notary public or through being secured with one or more Biometric Authentication, Password Authentication, Token Authentication, or other authentication technologies in an Electronic Notarization System provided by an Approved Electronic Notary Public Solution Provider approved pursuant to the Electronic Notary Public Act and this Chapter.

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### 003. APPLICATION.

003.01 To qualify for registration as an electronic notary public, an Applicant will need to:

003.01(A) Provide all information needed for registration pursuant to Neb. Rev. Stat. § 64-304;

003.01(B) Hold a valid Nebraska Notary Public commission;

003.01(C) Certify that he or she continues to meet the qualifications of a Notary Public;

003.01(D) Take the course of instruction and pass the examination as stated in Neb. Rev. Stat. § 64-305;

003.01(E) Pay the registration fee; and,

003.01(F) Provide any other information requested by the Secretary to prove the qualifications of the Applicant.

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### 004. REGISTRATION RENEWAL.

004.01 A Notary Public applying to renew his or her registration as an electronic notary public will so indicate on his or her notary public renewal application and pay the fee for

registration as an electronic notary public, in addition to the fee for renewal of his or her Notary Public commission.

004.02 If an electronic notary public fails to renew their registration at the same time the Notary Public commission is renewed, he or she will submit a new application for registration and meet all of the requirements of Section 003 of this Chapter to be registered as an electronic notary public.

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#### 005. APPROVED COURSE OF STUDY FOR ELECTRONIC NOTARIES PUBLIC.

005.01 The Secretary will administer the training course and testing for Applicants for electronic notary public registration.

005.02 Upon the Secretary's determination of a need for additional instructors, the Secretary may designate a third-party training course for Applicants or appoint certified Notary Public instructors to administer the training course and testing for Applicants for electronic notary public registration.

005.03 A passing score on the examination is 85% or better.

005.04 ~~If an Applicant fails the examination, the application for registration will be denied. An Applicant who fails the examination may reapply for registration after waiting thirty (30) days, including submitting a new application for registration, paying the registration fee, taking the course of instruction, and passing the exam. Each Applicant shall have three (3) attempts to take and pass the electronic notaries public examination.~~ An Applicant who fails the examination three (3) times will be considered incompetent to be registered as an electronic notary public and will not be eligible to take the exam again.

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#### 006. ELECTRONIC NOTARY PUBLIC'S ELECTRONIC SIGNATURE.

006.01 The electronic signature of an electronic notary public is to be Independently Verifiable and unique to the electronic notary public.

006.02 The electronic notary public's electronic signature is to be retained under the electronic notary public's sole control.

006.03 When the electronic notary public performs an electronic notarization, the electronic signature used by the electronic notary public is to be accessible by and attributable solely to the electronic notary public to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.



006.04 The electronic notary public's electronic signature is to be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination.

006.05 An image of the electronic notary public's handwritten signature is to appear on any visual or printed representation of an electronic notary public certificate regardless of the technology being used to affix the electronic notary public's electronic signature.

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## 007. ELECTRONIC NOTARY SEAL.

007.01 The electronic notary seal is to be Independently Verifiable and unique to the electronic notary public.

007.02 The electronic notary seal is to be retained under the electronic notary public's sole control.

007.03 When the electronic notary public performs an electronic notarization, the electronic seal used by the electronic notary public is to be accessible by and attributable solely to the electronic notary public to the exclusion of all other persons and entities for the entire time necessary to perform the electronic notarization.

007.04 The electronic notary seal is to be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or electronic notary certificate are observable through visual examination.

007.05 An image of the electronic notary public's electronic notary seal is to appear on any visual or printed representation of the electronic notary certificate regardless of the technology being used to affix the electronic notary public's electronic notary seal.

007.06 The perimeter of the electronic notary seal is to contain a border such that the physical appearance of the seal replicates the appearance of an inked seal on paper.

007.07 The electronic notary seal is to have, within its border, the electronic notary public's name exactly as commissioned, the words "Electronic Notary Public", the words "Nebraska" and the commission expiration date.

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## 008. PHYSICAL PRESENCE REQUIREMENT FOR ELECTRONIC NOTARIZATION.

When an electronic notary public performs an electronic notarization, the principal and the electronic notary public must be in each other's physical presence during the entire electronic notarization so that the principal and the electronic notary public can see, hear, communicate with,

and give identification documents as stated in Neb. Rev. Stat. § 64-105 to each other without the use of electronic devices such as telephones, computers, video cameras, or facsimile machines.

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#### 009. ELECTRONIC NOTARY SOLUTION PROVIDER APPLICATION.

009.01 Any person or entity applying to the Secretary for designation as an Approved Electronic Notary Solution Provider is to complete and submit an application to the Secretary for review and approval before authorizing any electronic notary seals or electronic signatures to Nebraska electronic notaries. The application is to include the following information:

009.01(A) Hardware and software specifications and requirements for the provider's Electronic Notarization System;

009.01(B) A description of the type(s) of technology used in the provider's Electronic Notarization System; and

009.01(C) A demonstration of how the technology is used to perform an electronic notarization.

009.02 An electronic notary solution provider may appeal the Secretary's denial of the provider's application for designation as an Approved Electronic Notary Solution Provider as provided under the Nebraska Administrative Procedures Act, Neb. Rev. Stat. §§ 84-901 through 84-920.

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#### 010. CRITERIA FOR APPROVAL OF ELECTRONIC NOTARY SOLUTION PROVIDERS.

010.01 Each Applicant and each Approved Electronic Notary Solution Provider is to:

010.01(A) Provide a free and readily available viewer/reader so as to enable all parties relying on the electronically notarized record or document to view the electronic notary public's electronic signature and the electronic notary seal without incurring any cost.

010.01(B) Comply with the laws, policies, and rules that govern Nebraska Notaries Public;

010.01(C) Provide an Electronic Notarization System that complies with the technical specifications of the rules and standards that govern electronic notarization processes and procedures in Nebraska;

010.01(D) Ensure the provider's principals or employees take the mandatory electronic notary public education course and pass the examination as is necessary to ensure the provider possesses sufficient familiarity with Nebraska's electronic notary public laws and regulations;

010.01(E) Ensure Notaries Public present the Certificate of Registration to act as an Electronic Notary Public issued pursuant to Neb. Rev. Stat. § 64-312 prior to authorizing an electronic notary seal and electronic signature;

010.01(F) Verify the authorization of a Nebraska Notary Public to perform electronic notary acts by confirming through the Secretary or the Secretary's website should an online listing be made available;

010.01(G) Provide prorated fees to align the usage and cost of the Electronic Notarization System with the commission term limit of the electronic notary public purchasing the electronic notary seal and electronic signature;

010.01(H) Suspend the use of any Electronic Notarization System for any Notary Public whose commission has been revoked, suspended, or canceled by the Secretary ; and

010.01(I) Submit an exemplary of the electronic notary public's electronic signature and the electronic notary seal to the Secretary for each electronic notary public who subscribes to the provider's Electronic Notarization System.

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## 011. ELECTRONIC NOTARY SOLUTION PROVIDER CHANGES.

011.01 An electronic notary solution provider is to notify the Secretary within forty-five (45) days of changes, modifications, or updates to information previously submitted to the Secretary.

011.02 An Approved Electronic Notary Solution Provider is to provide notice to the Secretary pursuant to the Electronic Notary Public Act and this Chapter within forty-five (45) days before making available to Nebraska electronic notaries public any updates or subsequent versions of the provider's Electronic Notarization System. The Secretary may remove the designation of the Approved Electronic Notary solution provider if the changes to Electronic Notarization System do not meet the requirements of the Electronic Notary Public Act and this Chapter.

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## 012. SEPARATE ATTESTATIONS.

012.01 Each electronic signature presented for notarization and attestation in the form of an acknowledgment is to be individually affixed to the electronic document by the principal signer and should be acknowledged separately by the principal signer, except in the following situation:

012.01(A) The notarized document is executed on behalf of:

012.01(A)(i) Any foreign or domestic:

012.01(A)(i)(1) Corporation, non-profit corporation, professional corporation;

012.01(A)(i)(2) Limited liability company;

012.01(A)(i)(3) Unincorporated association or partnership;

012.01(A)(i)(4) Business trust, estate, partnership, trust; or

012.01(A)(ii) The United States, any state, or any foreign government

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### 013. ACCESS AND USE OF ELECTRONIC NOTARY SEAL AND ELECTRONIC SIGNATURE.

013.01 Neither the employer nor any of the employer's employees or agents may use or permit the use of an electronic notary seal or signature by anyone other than the authorized electronic notary public to whom it is registered.

013.02 Access to electronic notary signatures and electronic notary seals is to be protected by the use of a Biometric Authentication, Password Authentication, Token Authentication, or other form of authentication approved by the Secretary according to the Electronic Notary Public Act and this Chapter.

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### 014. REPORT OF THEFT OR VANDALISM.

014.01 An electronic notary public who is to report, pursuant to Neb. Rev. Stat. § 64-310, the theft or vandalism of his or her electronic signature, electronic notary seal, or electronic record, including the backup record, is to do so in writing to the Secretary within ten (10) days after discovering the theft or vandalism.

014.02 Failure to report the theft or vandalism as required in Neb. Rev. Stat. § 64-310 may subject the electronic notary public to having his or her registration as an electronic notary public removed.

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### 015. RECORD OF ELECTRONIC NOTARIAL ACTS.

015.01 Pursuant to Neb. Rev. Stat. § 64-310, an electronic notary public is to keep a journal of all electronic notarizations he or she performs and will present this journal, or any portion thereof, to the Secretary upon written request.

015.02 The electronic notary public is to maintain this record, and the backup record, for at least ten (10) years after the date of the notarial act.

015.03 An electronic notary public who fails to maintain the record or backup record for the retention period, or fails to timely provide the record upon request by the Secretary, will be subject to having his or her registration removed.

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#### 016. REMOVAL OF REGISTRATION.

016.01 An electronic notary public violating the Electronic Notary Public Act or this Chapter is subject to having his or her registration removed.

016.02 Any removal of a registration will be under the removal procedures provided in Neb. Rev. Stat. § 64-113 and 433 NAC 6 007.

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#### 017. CHANGE OF ELECTRONIC NOTARY PUBLIC INFORMATION OR REGISTRATION STATUS.

017.01 In addition to complying with Title 433 NAC 6 005, Changes to Notary Public Commission Information, an electronic notary public is to notify the Secretary in writing within forty-five (45) days after changing his or her Approved Electronic Notary Solution Provider.

017.01(A) The new Approved Electronic Notary Solution Provider is to submit an exemplary of the new electronic notary public's electronic signature and the electronic notary seal to the Secretary for the electronic notary public.

017.02 Failure to timely notify the Secretary may subject the electronic notary public to having his or her registration removed.

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#### 018. EXPIRATION OF REGISTRATION; RESIGNATION, CANCELLATION, OR REVOCATION; DEATH OF ELECTRONIC NOTARY PUBLIC; REQUIRED ACTIONS.

An electronic notary public, or his or her duly authorized representative, who is required to certify that he or she has erased, deleted, or destroyed the coding, disk, certificate, card, software, file, password, or program that enables the electronic affixation of the electronic notary public's electronic signature and electronic notary seal, in compliance with Neb. Rev. Stat. § 64-311, is to do so in writing to the Secretary within three months after the registration of the electronic notary public expires, is resigned, canceled, or revoked or upon the death of the electronic notary public.

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019. FEES.

The fee for registering or re-registering as an electronic notary public is \$100.00.

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020. APPLICATIONS AND OTHER FORMS

~~020.01 The following forms will be available for registration as an electronic notary public:~~

~~020.01(A) Initial Electronic Notary Public Registration form;~~

~~020.01(B) Electronic Notary Public Renewal Application and Re-Registration form; and~~

~~020.01(C) Electronic Notary Public Solution Provider application.~~

~~020.02~~ The forms required to register and maintain a registration as an electronic notary public listed in this section will be made available to all Applicants on the Secretary's website or upon request.

TITLE 433 – SECRETARY OF STATE

CHAPTER 8 – ONLINE NOTARIES PUBLIC

001. SCOPE.

001.01 The Rules in this Chapter implement the Online Notary Public Act, Neb. Rev. Stat. §§ 64-401 through 64-418.

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002. DEFINITIONS.

In addition to terms defined in the Online Notary Public Act, the following definitions apply for purposes of Chapter 8 of these regulations:

002.01 "Applicant" means a person applying for registration as a Nebraska online notary public.

002.02 "Approved Online Notary Solution Provider" means a person or entity approved to provide an Online Notarization System by the Secretary pursuant to the Online Notary Public Act.

002.03 "Biometric Authentication" means proving the identity of a user by verification of the user's identity through technologies that measure and analyze one or more human physiological or behavioral characteristics of the user in order to access and use an Online Notarization System. Biometric Authentication technologies include fingerprint scanning devices, retinal scanning devices, and handwriting analysis devices.

002.04 "Independently Verifiable" means capable of government or third-party authentication of a notarial act, a notary's identity, and a Notary Public's relevant authority.

002.05 "Notary Public" means a person commissioned as a notary public under Neb. Rev. Stat. §§ 64-101 to 64-119.

002.06 "Online Notarization System" means a set of applications, programs, hardware, software, or technology designed or provided by an Approved Online Notary Solution Provider to enable a Notary Public to perform online notarizations.

002.07 "Password Authentication" means the user enters a secret word, phrase, or symbol set in order to access and use an Online Notarization System.

002.08 "Secretary" means the Nebraska Secretary of State and his or her designated staff.

002.09 "Token Authentication" means the use of a physical device in addition to a password or personal identification number ("PIN") in order to access and use an Online Notarization System. Physical devices used in Token Authentication technologies include magnetic cards or "smart cards" and Universal Serial Bus (USB) memory sticks or "USB keys".

002.10 "Under his or her exclusive control", for the purposes of the Secretary's interpretation of Neb. Rev. Stat. § 64-410, means "under the online notary public's sole control" as defined in this Chapter.

002.11 "Under the online notary public's sole control" means accessible by and attributable solely to the online notary public to the exclusion of all other persons and entities, either through being in the direct physical custody of the online notary public or through being secured with one or more Biometric Authentication, Password Authentication, Token Authentication, or other authentication technologies in an Online Notarization System provided by an Approved Online Notary Solution Provider approved pursuant to the Online Notary Public Act and this Chapter.

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### 003. APPLICATION.

003.01 To qualify for registration as an online notary public, an Applicant will need to:

003.01(A) Provide all information needed for registration pursuant to Neb. Rev. Stat. § 64-406;

003.01(B) Hold a valid Nebraska Notary Public commission;

003.01(C) Certify that he or she continues to meet the qualifications of a Notary Public;

003.01(D) Take the course of instruction and pass the examination as stated in Neb. Rev. Stat. § 64-404;

003.01(E) Pay the registration fee; and,

003.01(F) Provide any other information requested by the Secretary to prove the qualifications of the applicant.

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### 004. REGISTRATION RENEWAL.

004.01 A Notary Public applying to renew his or her registration as an online notary public will so indicate on his or her notary public renewal application and pay the fee for



registration as an online notary public, in addition to the fee for renewal of his or her Notary Public commission.

004.02 If an online notary public fails to renew his or her registration at the same time the Notary Public commission is renewed, he or she will submit a new application for registration and meet all of the requirements of Section 003 of this Chapter to be registered as an online notary public.

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## 005. APPROVED COURSE OF STUDY AND EXAMINATION FOR ONLINE NOTARIES PUBLIC.

005.01 The Secretary will administer the training course and testing for Applicants for online notary public registration.

005.02 Upon the Secretary's determination of a need for additional instructors, the Secretary may designate a third-party training course for applicants or appoint certified Notary Public instructors to administer the training course and testing for Applicants for online notary public registration.

005.03 A passing score on the examination is 85% or better.

005.04 ~~If an Applicant fails the examination, the application for registration will be denied. An Applicant who fails the examination may reapply for registration after waiting thirty (30) days, including submitting a new application for registration, paying the registration fee, taking the course of instruction, and passing the exam. Each Applicant shall have three (3) attempts to take the online notaries public examination.~~ An Applicant who fails the examination three (3) times will be considered incompetent to be registered as an online notary public and will not be eligible to take the exam again.

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## 006. ONLINE NOTARY PUBLIC ELECTONIC SIGNATURE.

006.01 The online notary public's electronic signature is to be Independently Verifiable and unique to the online notary public.

006.02 The online notary public's electronic signature is to be retained under the online notary public's sole control.

006.03 When the online notary public performs an online notarization, the electronic signature used by the online notary is to be accessible by and attributable solely to the online notary public to the exclusion of all other persons and entities for the entire time necessary to perform the online notarial act.

006.04 The online notary public's electronic signature is to be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or online notarial certificate are observable through visual examination.

006.05 An image of the online notary's handwritten signature is to appear on any visual or printed representation of an online notarial certificate regardless of the technology being used to affix the online notary public's electronic signature.

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## 007. ONLINE NOTARY SEAL.

007.01 The online notary seal is to be Independently Verifiable and unique to the online notary public.

007.02 The online notary seal is to be retained under the online notary public's sole control.

007.03 When the online notary performs an online notarial act, the online notary seal used by the online notary public is to be accessible by and attributable solely to the online notary public to the exclusion of all other persons and entities for the entire time necessary to perform the online notarial act.

007.04 The online notary seal is to be attached or logically associated with the document, linking the data in such a manner that any subsequent alterations to the underlying document or online notary certificate are observable through visual examination.

007.05 An image of the online notary seal is to appear on any visual or printed representation of the online notarial certificate regardless of the technology being used to affix the online notary public's online notary seal.

007.06 The perimeter of the online notary seal is to contain a border such that the physical appearance of the seal replicates the appearance of an inked seal on paper.

007.07 The online notary seal is to have, within its border, the online notary public's name exactly as commissioned, identifying number, and commission expiration date, as well as the words "Online Notary Public" and the word "Nebraska".

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## 008. PHYSICAL LOCATION OF ONLINE NOTARY PUBLIC DURING PERFORMANCE OF ONLINE NOTARIAL ACT.

When an online notary public performs an online notarial act, he or she must be physically located in the State of Nebraska.

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## 009. ONLINE NOTARY SOLUTION PROVIDER APPLICATION.

009.01 Before issuing any online notary seals or electronic signatures to Nebraska online notaries public, an online notary solution provider will need to be approved by the Secretary.

009.02 To be approved, the online notary solution provider will complete and submit an application to the Secretary. The application is to include the following information:

009.02(A) Hardware and software specifications and requirements for the provider's Online Notarization System,

009.02(B) A description of the type(s) of technology used in the provider's online notarization system, and

009.02(C) A demonstration of how the technology is used to perform an online notarization.

009.02(D) Any other information that the Secretary requests related to the provider's Online Notarization System.

009.03 An online notary solution provider may appeal the Secretary's denial of the provider's application for designation as an Approved Online Notary Solution Provider as provided under the Nebraska Administrative Procedures Act, Neb. Rev. Stat. §§ 84-901 through 84-920.

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## 010. CRITERIA AND STANDARDS FOR APPROVAL OF ONLINE NOTARY SOLUTION PROVIDERS.

010.01 Each applying and each Approved Online Notary Solution Provider is to:

010.01(A) Provide a free and readily available viewer/reader so as to enable all parties relying on the online notarized record or document to view the electronic signature and the online notary seal without incurring any cost.

010.01(B) Comply with the laws, policies, and rules that govern Nebraska Notaries Public and online notaries public;

010.01(C) Provide an Online Notarization System that complies with the technical specifications of the rules and standards that govern online notarization processes and procedures in Nebraska, including the minimum requirements for credential analysis, identity proofing, and communication technologies;

010.01(D) To ensure the provider possesses sufficient familiarity with Nebraska's online notary public laws and requirements, the individual signing the application on behalf of the online notary solution provider is to take the mandatory online notary public education course and pass the examination;

010.01(E) Ensure notaries public present their Certificate of Registration to act as an online notary public issued by the Secretary prior to authorizing an online notary seal and electronic signature;

010.01(F) Verify the authorization of a Nebraska Notary Public to perform online notarial acts by confirming through the Secretary or the Secretary's website should an online listing be made available;

010.01(G) Provide prorated fees to align the usage and cost of the online notary solution with the commission term limit of the Notary Public purchasing the online notary seal and electronic signature;

010.01(H) Suspend the use of any online notary solution for any Notary Public whose commission or registration has been revoked, suspended, or canceled by the Secretary; and

010.01(I) Submit an exemplary of the online notary public's electronic signature and the online notary seal to the Secretary for each online notary public who subscribes to the provider's Online Notarization Solution.

010.02 Communication technology provided by the online notary solution provider is to, at a minimum:

010.02(A) Provide for continuous, synchronous audio-visual feeds;

010.02(B) Provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak to each other simultaneously through live, real time transmission;

010.02(C) Provide sufficient captured image resolution for credential analysis to be performed in accordance with the Online Notary Public Act and this Chapter.

010.02(D) Include a means of authentication that reasonably ensures only the proper parties have access to the audio-video communication;

010.02(E) be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz, and the means and methods used to generate the credential analysis output; and

010.02(F) provide reasonable security measures to prevent unauthorized access to:

010.02(F)(i) the live transmission of the audio-video communication;

010.02(F)(ii) a recording of the audio-video communication;

010.02(F)(iii) the verification methods and credentials used to verify the identity of the principal; and

010.02(F)(iv) the electronic documents presented for online notarization.

010.03 Credential analysis provided by an online notary solution provider is to, at a minimum:

010.03(A) Use automated software processes to aid the online notary public in verifying the identity of a principal or any credible witness;

010.03(B) Ensure that the credential passes an authenticity test, consistent with sound commercial practices that:

010.03(B)(i) Use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features;

010.03(B)(ii) Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;

010.03(B)(iii) Use information held or published by the issuing source or authoritative sources, as available, to confirm the validity of personal details and credential details; and

010.03(B)(iv) Provide the result of the authenticity test to the online notary public;

010.03(C) Enable the online notary public to visually compare the following for consistency: the information and photo presented on the credential itself and the principal as viewed by the online notary public in real time through audio-visual transmission.

010.04 Identity proofing provided by an online notary solution provider is to, at a minimum, meet the following:

010.04(A) The principal is to complete a quiz consisting of a minimum of five questions related to the principal's personal history or identity, formulated from public and proprietary data sources;

010.04(B) Each question is to have a minimum of five possible answer choices;

010.04(C) At least 80% of the questions are to be answered correctly;

010.04(D) All questions are to be answered within two minutes;

010.04(E) If the principal fails his or her first attempt, he or she may retake the quiz one time within 24 hours;

010.04(F) During the retake, a minimum of 60% of the prior questions are to be replaced; and

010.04(G) If the principal fails his or her second attempt, he or she is not permitted to retry with the same online notary public for 24 hours.

010.05 If the principal or online notary public exit the online notary solution or the audio or visual feed is interrupted or terminated, the principal will need to restart the online notarial process from the beginning.

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## 011. ONLINE NOTARY SOLUTION PROVIDER CHANGES.

011.01 An online notary solution provider is to notify the Secretary within forty-five (45) days of changes, modifications, or updates to information previously submitted to the Secretary.

011.02 An approved online notary solution Provider is to provide notice to the Secretary pursuant to the Online Notary Public Act and this Chapter within forty-five (45) days before making available to Nebraska online notaries public any updates or subsequent versions of the provider's online notarization system. The Secretary may remove the designation of the Approved Online Notary Solution Provider if the changes to the online notary system do not meet the requirements of the Online Notary Public Act and this Chapter.

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## 012. SEPARATE ATTESTATIONS.

012.01 For an online notarial act, each principal's signature presented for notarization and attestation in the form of an acknowledgment is to be individually affixed to the electronic document by the principal and should be acknowledged separately by the principal, except in the following situations:

012.01(A) The notarized document is executed on behalf of:

012.01(A)(i) Any foreign or domestic:

012.01(A)(i)(1) Corporation, non-profit corporation, professional corporation

012.01(A)(i)(2) Limited liability company;

012.01(A)(i)(3) Unincorporated association or partnership

012.01(A)(i)(4) Business trust, estate, partnership, trust; or

012.01(A)(ii) The United States, any state, or any foreign government

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#### 013. ACCESS AND USE OF ONLINE NOTARY SEAL AND ELECTRONIC SIGNATURE.

013.01 Neither the employer of an online notary public nor any of the employer's employees or agents may use or permit the use of an online notary seal or electronic signature by anyone other than the authorized online notary public to whom it is registered.

013.02 Access to an online notary public's signature and online notary seal is to be protected by the use of a password authentication, token authentication, biometric authentication, or other form of authentication approved by the Secretary according to the Online Notary Public Act.

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#### 014. REPORT OF THEFT OR VANDALISM.

014.01 An online notary public who is reporting, pursuant to Neb. Rev. Stat. § 64-410, the theft or vandalism of his or her electronic signature, online notary seal, or electronic record, including the backup record, is to do so in writing to the Secretary within ten (10) days after the discovery of the theft or vandalism.

014.02 Failure to report the theft or vandalism as required in Neb. Rev. Stat. § 64-410 may subject the online notary public to having his or her registration as an online notary public removed.

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#### 015. RECORD OF ONLINE NOTARIAL ACTS.

015.01 Pursuant to Neb. Rev. Stat. § 64-409, an online notary public is to maintain a secure electronic record of all online notarial acts by the online notary public.

015.02 The online notary public is to maintain this record, and a backup record, for at least ten (10) years after the date of the online notarial act.

015.03 The online notary public will make this record, or any portion thereof, available to the Secretary upon request by the Secretary.

015.04 An online notary public who fails to maintain the record or backup record for the retention period, or fails to timely provide the record upon request by the Secretary, will be subject to having his or her registration removed.

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## 016. REMOVAL OF REGISTRATION.

016.01 An online notary public violating the Online Notary Public Act or this Chapter is subject to having his or her registration removed.

016.02 Any removal of a registration will be under the procedures provided in Neb. Rev. Stat. § 64-113 and 433 NAC 6 007.

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## 017. CHANGE OF ONLINE NOTARY INFORMATION OR REGISTRATION STATUS

017.01 In addition to complying with Title 433 NAC 6 005, Changes to Notary Public Commission Information, an online notary public is to notify the Secretary in writing within forty-five (45) days after any changing Online Notary Systems or Approved Online Notary Solution Providers.

17.01(A) The new Approved Online Notary Solution Provider is to submit an exemplary of the new online notary public's electronic signature and the online notary seal to the Secretary for the online notary public.

017.02 Failure to timely update this information may subject the online notary public to having his or her registration removed.

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## 018. EXPIRATION OF REGISTRATION; RESIGNATION, CANCELLATION, OR REVOCATION; DEATH OF ONLINE NOTARY PUBLIC; REQUIRED ACTIONS.

018.01 An online notary public, or his or her duly authorized representative, who is required to certify that he or she has erased, deleted, or destroyed the coding, disk, certificate, card, software, file, password, or program that enables the electronic affixation of the online notary public's electronic signature and online notary seal, in compliance with Neb. Rev. Stat. § 64-413, is to do so in writing to the Secretary within three months after the registration of the online notary public expires, is resigned, canceled, or revoked or upon the death of the online notary public.

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## 019. FEES.

The fee for registering or renewing a registration as an online notary public is \$50.00.



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## 020. APPLICATIONS AND OTHER FORMS

~~020.01 The following forms will be available for registration as an online notary public:~~

~~020.01(A) Initial Online Notary Public Registration form;~~

~~020.01(B) Online Notary Public Renewal Application and Re-Registration form; and~~

~~020.01(C) Online Notary Public Solution Provider application.~~

~~020.02~~ The forms required to register and maintain a registration as an online notary public listed in this section will be made available to all Applicants on the Secretary's website or upon request.

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## ~~021. EFFECTIVE DATE.~~

~~This chapter becomes effective on July 1, 2020.~~