

(Proposed) Rules for Electronic Notarial Acts in the State of Arkansas

1.00 Purpose

1.01 The purpose of this rule is to provide procedures for implementing a system allowing for the electronic notarization of documents by a notary specifically commissioned to electronically notarize documents in the State of Arkansas.

2.00 Definitions

Definitions as used herein are limited for the purposes of these rules.

2.01 "Applicant" means a person applying to register as an Arkansas Electronic Notary Public.

2.02 "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

2.03 "Electronic notary" means a traditional notary public who has been commissioned by the Secretary of State and been granted the capability of performing electronic notarial acts in conformance with A.C.A. §21-14-101 *et seq.*, and these rules.

2.04 "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

2.05 "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a person with the intent to sign the electronic document or record.

2.06 "Key Pair" means a private key and its corresponding public key in an asymmetric cryptosystem.

2.07 "Asymmetric cryptosystem" is an electronically processed algorithm, or series of algorithms, which uses two different keys where one key encrypts the message, one key decrypts the message, and the keys do not allow one key to be discovered through the knowledge of the other key.

2.07 "Private key" means the key of a key pair that is used to create a digital signature.

2.09 "Public key" means the key of a key pair that is used to verify a digital signature.

2.10 "Traditional Notary" means a commissioned notary pursuant to A.C.A. §21-14-101 *et seq.*

2.11 "Good standing" means a notary has completed all required paperwork for a traditional commission and is not subject to pending disciplinary investigation or action.

3.00 Qualifications

3.01 A traditional notary public in good standing, commissioned in the State of Arkansas, may apply for commission as an electronic notary public.

3.02 Applicants must:

- 1) Be in good standing as a traditionally-commissioned notary;
- 2) Complete an Electronic Notary Application Form;
- 3) Submit a \$20 application fee; and
- 4) Successfully complete a training class, which includes passing an exam approved by the Secretary of State.

3.03 Applicants must complete training as described herein in 5.00 Training.

3.04 The completed Electronic Notary Application Form must contain no significant misstatement or omission of fact by the applicant.

3.05 Every applicant for an electronic notary commission shall attest that he or she has not been convicted of a felony.

4.00 Term and Renewal

4.01 An electronic notary shall be commissioned for a term of ten (10) years.

4.02 A notary already commissioned on the effective date of these rules, who applies for an electronic commission, shall receive a commission that shall expire on the same date as the traditional commission.

4.03 The notary may submit an application for renewal no more than thirty (30) calendar days before the expiration of the notary's electronic commission.

4.04 To renew an electronic commission, the notary must:

- 1) Complete an Electronic Notary Application Form;
- 2) Submit a \$20 application fee; and
- 3) Successfully complete a training class, which includes passing an exam approved by the Secretary of State.

5.00 Training

5.01 Applicants must:

- 1) Successfully complete an approved training course provided by the Secretary of State's Office; and
- 2) Pass an exam approved by the Secretary of State.

5.02 The applicant may attempt the exam up to two (2) times in a twelve (12) month period. If the applicant fails to successfully pass the exam in that time, the applicant must repeat the process as described in 3.02

5.03 Electronic notaries shall, every two years of their commission, complete a refresher training course offered and approved by the Secretary of State.

6.00 Device and Key Pair

6.01 After an applicant has been commissioned as an electronic notary, the applicant, in conjunction with the Secretary of State's Office, shall establish a key pair for the individual electronic notary.

6.02 The key pair shall be used for creating and verifying a digital signature that has a unique property so that the public key can verify the digital signature that the private key creates.

6.03 The signer's public key shall be capable of verification by the person receiving the electronic transmission.

- 1) The person can accurately determine whether the signer created the digital signature with his or her private key.
- 2) The person can accurately determine whether the initial message has been altered after the digital signature was added.

6.04 When the electronic notary public creates his or her key pair, he or she shall enter the Secretary of State's Office's public key as a trusted certificate.

6.05 As each electronic notary's public key is created, it shall be uploaded into the Secretary of State's e-notary key verification system.

6.06 When the electronic notary public creates his or her electronic key pair, in the "notes" or "comments" section of the key creation window, the notary shall enter the following information:

- 1) The notary's name, exactly as it appears in the traditional notary public commission;
- 2) The name of the county where the notary public's bond is filed;
- 3) The phrase "Arkansas Electronic Notary Public";
- 4) The date upon which the notary public's electronic commission expires; and
- 5) The notary public's commission number issued by the Secretary of State's Office.

6.07 The electronic notary shall be issued a device on which to save his or her private key. The device issued by the Secretary of State must remain in the electronic notary's exclusive control.

6.08 If an electronic notary public resigns, or his or her commission is revoked, the electronic notary shall return the device bearing the electronic private key to the Secretary of State's Office.

7.00 Physical Presence Required

7.01 Physical presence is required for all electronic notary acts.

8.00 Accepted Notarization Processes

8.01 A document may be signed and electronically notarized in one of three ways:

- 1) If the signer has an electronic signature and wishes to use that signature on a document, the notary may electronically notarize the electronic signature.
- 2) The signer may physically sign the document, which the notary may then scan into a computer and electronically notarize, or
- 3) The signer may enter a handwritten signature on equipment designed to capture a signature, and the notary may electronically notarize the electronically-captured signature.

8.02 A document that contains an electronic signature shall contain the following:

- 1) A computer-based certificate that identifies the issuing entity and the subscriber;
- 2) The subscriber's public key; and
- 3) Digital signature of the issuing entity.

8.03 The electronic notary of a digitally signed document shall:

- 1) Be listed in the certificate;
- 2) Accept the certificate; and
- 3) Lawfully hold the private key that corresponds to the public key that is listed on the certificate.

8.04 When the electronic notary public sends the electronically notarized document to its intended recipient, the electronic notary shall include a link to the Secretary of State's e-notary key verification system.

9.00 Fees

9.01 Each electronic notary public in this state shall charge and collect the following fees:

- (1) For protest and record of same\$ 5.00
- (2) For each notice of protest 5.00
- (3) For each certificate and seal 5.00

9.02 Class and Penalty

- 1.) Any electronic notary public who shall knowingly charge, demand, or receive any fees not provided by law, or who shall charge, demand, or receive any greater fees than are provided in this section shall be deemed guilty of a misdemeanor.

2.) Upon conviction, he or she shall be fined in any sum not less than one hundred dollars (\$100) for each and every offense.

9.03 The electronic notary application fee is twenty dollars (\$20)

10.00 Change of Notary's Information

10.01 If any information related to the notary's commission (name, address, county of residence or e-mail address) changes, the notary shall notify the Secretary of State's Office within thirty (30) days of such change.

10.02 After being informed of personal information changes, the Secretary of State's Office shall guide the electronic notary on how to make changes to his or her electronic key pair.

11.00 Denial or revocation of electronic notary public commission

11.01 The Secretary of State may deny the application of any person for appointment or reappointment or revoke the electronic commission of any notary public during the electronic notary's term of appointment if the notary:

- 1.) Is convicted of identity theft or other electronic fraud;
- 2.) Is convicted of a felony;
- 3.) Has his or her traditional notary commission revoked;
- 4.) Submits an application for commission and appointment that contains substantial and material misstatement or omission of fact;
- 5.) Is convicted of official misconduct under the provisions of § 21-14-111;
- 6.) Knowingly uses false or misleading advertising in which the notary public represents that the notary public has powers, duties, rights, or privileges that the notary public does not possess by law;
- 7.) Is found by a court of this state to have engaged in the unauthorized practice of law;
- 8.) Is found by a court to have improperly notarized documents according to the law; or
- 9.) Fails to complete the requirements under § 21-14-101.

11.02 The Secretary of State may investigate a possible violation of this section upon a signed complaint from any person.

11.03 After a notary public receives notice from the Secretary of State that the notary public's commission has been revoked, unless the revocation has been enjoined the notary public shall immediately send or have delivered to the Secretary of State:

- (1) The notary public's journal of electronic notarial acts;
- (2) All other papers and copies relating to the electronic notary public's notarial acts; and
- (3) The device containing the electronic notary public's official seal and key pair.

11.04 A person whose notary public commission has been revoked pursuant to the provisions of this section may subsequently apply for commission and appointment as a notary public after ten (10) years have elapsed from the date of the revocation.