

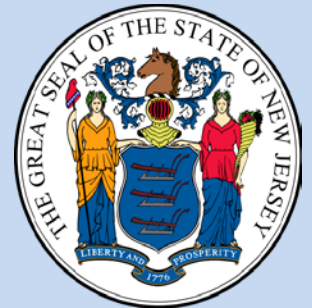
New Jersey Law Revision Commission

THE REVISED UNIFORM LAW ON NOTARIAL ACTS

AND

THE PROPOSED NEW JERSEY NOTARIES PUBLIC ACT

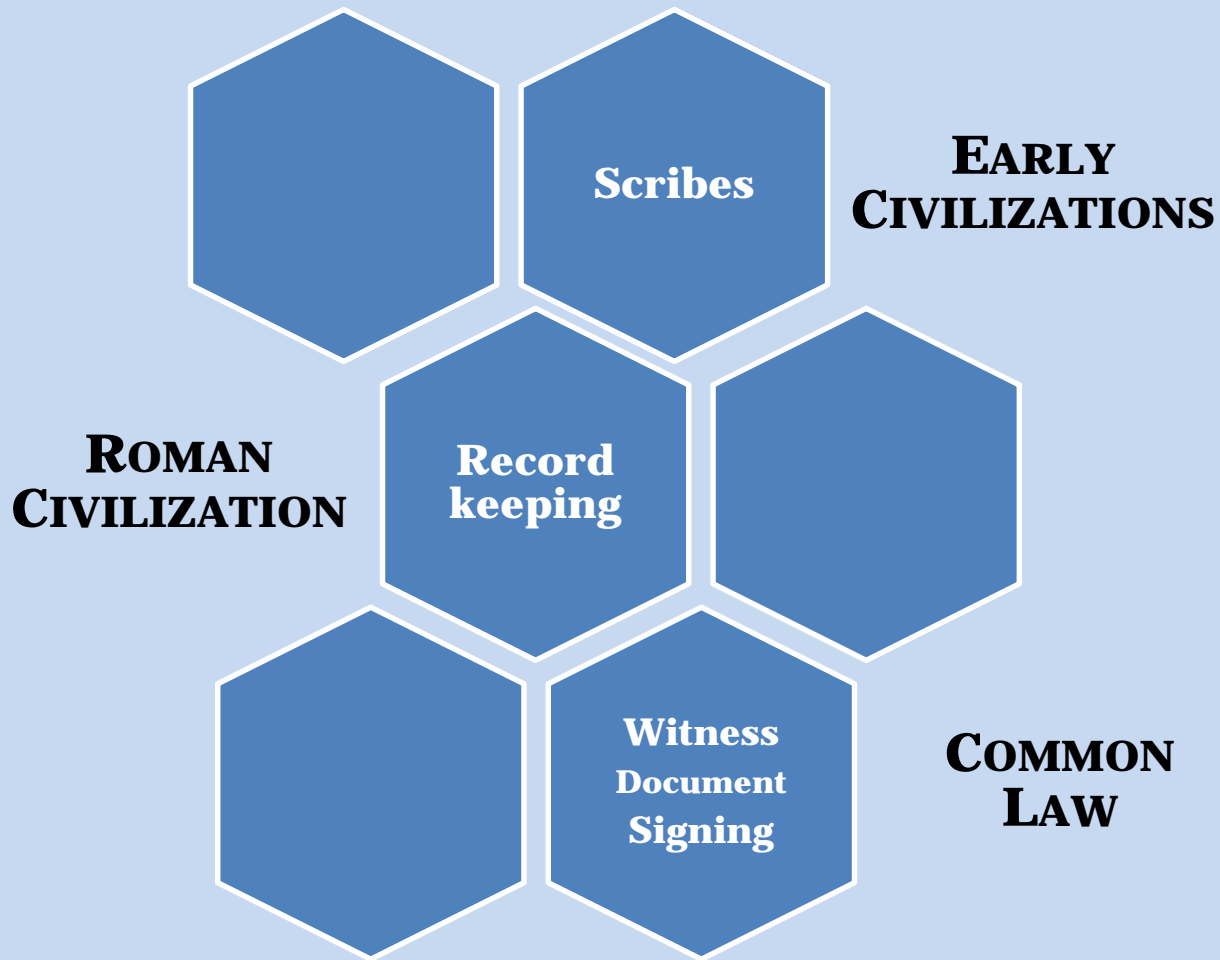
**Presented by
Jayne J. Johnson, Esq.
jjj@njlrc.org**





ORIGINS OF THE NOTARY PUBLIC SERVICE

NOTARY PUBLIC SERVICE

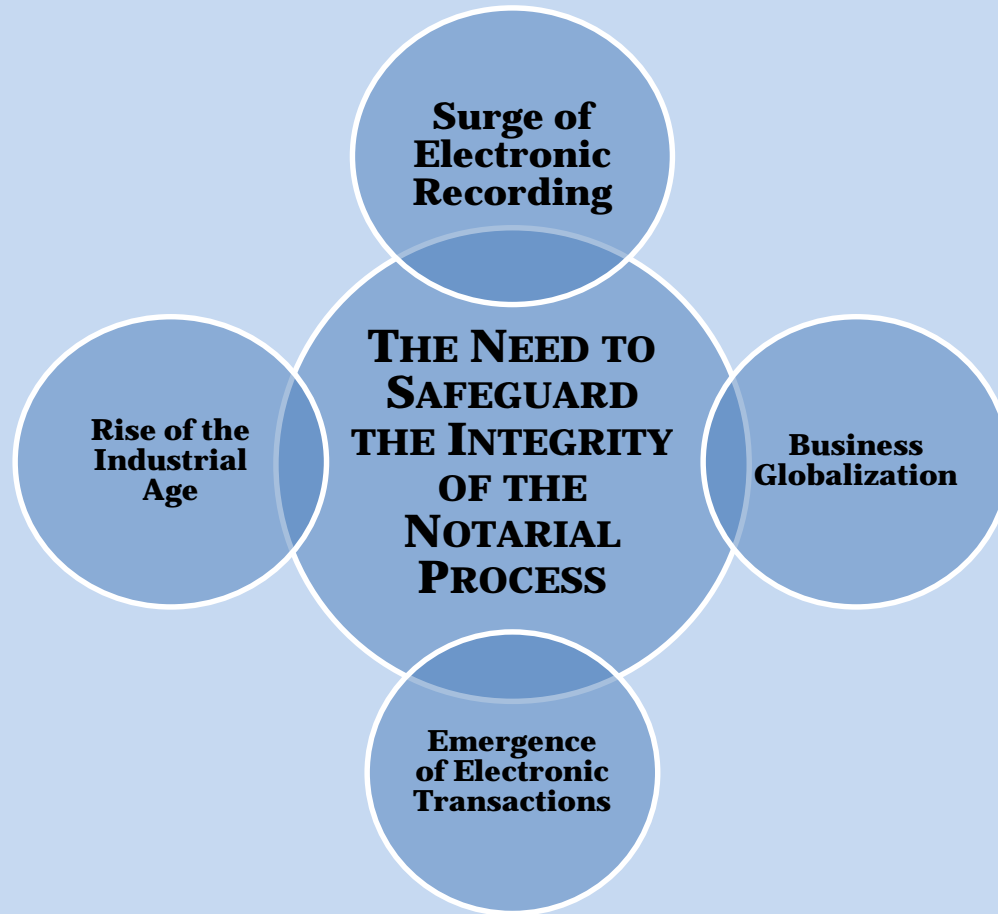


NOTARIES PUBLIC

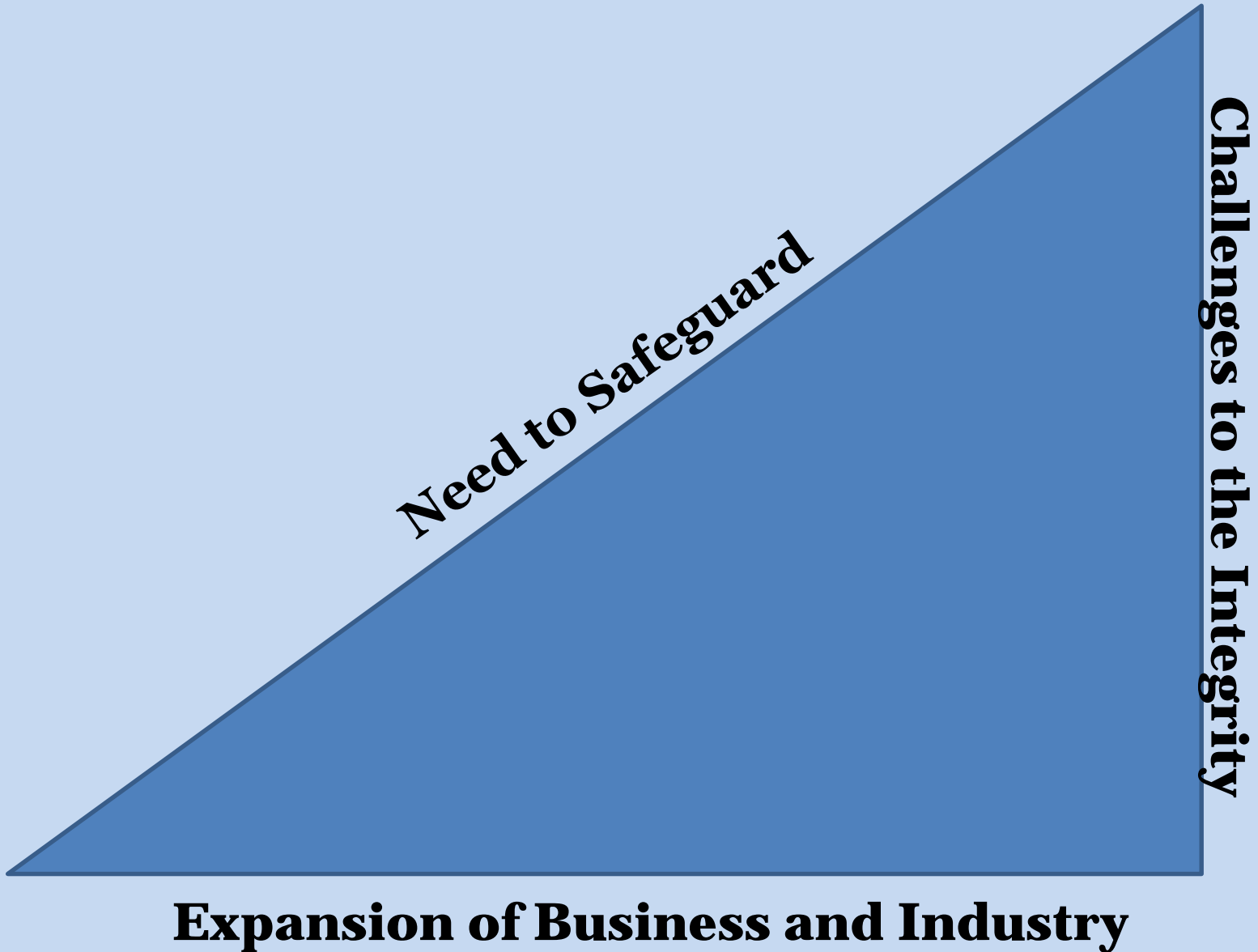
- Today, a “notary public” in many societies is considered a legal officer of the court - a highly, regarded position of rank and influence.²



EXPANSION OF BUSINESS AND INDUSTRY



NOTARIAL PROCESS

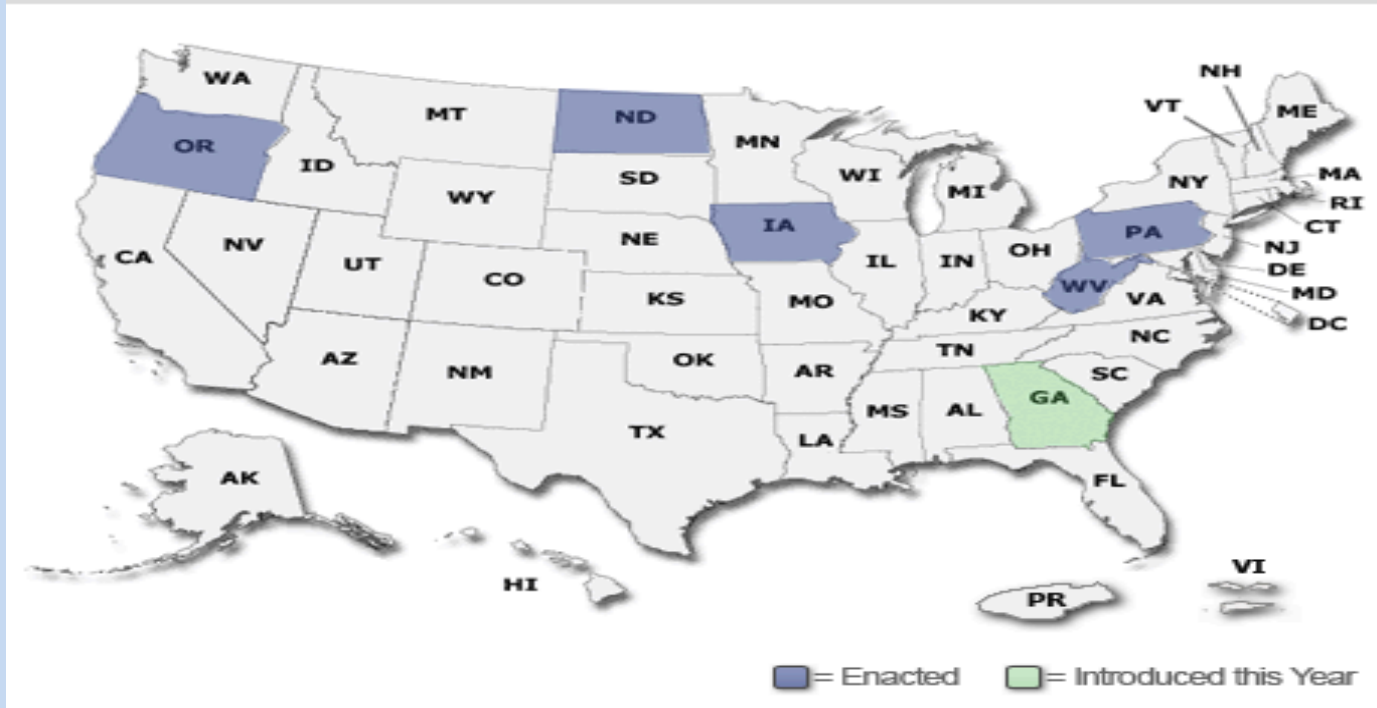


UNIFORM LAW COMMISSION

- In 1982, the Uniform Law Commission (ULC) proposed the Uniform Law on Notarial Acts.
- In July 2010, the ULC approved and recommended for adoption in all states the Revised Uniform Law on Notarial Acts (RULONA).³

Revised Uniform Law on Notarial Acts

Enactment Status Map



Legislative Tracking

2014 Introductions & Enactments

| State | Bill | Sponsor | Status |
|---------------|---------|---------|------------|
| Georgia | HB 815 | Lindsey | Introduced |
| Pennsylvania | HB 25 | Grell | Enacted |
| West Virginia | HB 4012 | Smith | Enacted |

RULONA

- Expands the definition of a “notarial act” to include electronic records.
- Allows personal knowledge or satisfactory evidence to verify the identity of the individual appearing before the notary.
- Requires personal appearance of an individual who signs a record before the notary for both tangible and electronic records.
- Provides the basis for notaries public to refuse performance.

RULONA

- Delineates the qualifications for obtaining and renewing a notary public commission, including age, residency, course of study, and examination requirements;
- Outlines the grounds to deny, refuse to renew, revoke, suspend or condition a notary's commission;
- Prohibits a notary public or notarial officer who is not an attorney licensed to practice law:
 - (1) from giving legal advice;
 - (2) from acting as an immigration consultant or an expert on immigration matters; or
 - (3) otherwise performing the duties of an attorney licensed to practice law;

RULONA

- **Creates a journal provision requiring notaries to chronicle each act and retain the journal for ten years after performance.**
- **The journal may be in a tangible or electronic form, but the act does not permit maintaining both simultaneously.**

NEW JERSEY NOTARIES PUBLIC ACT

Notaries Public Act of 1979

Recommended Language

RULONA

NEW JERSEY NOTARIES PUBLIC ACT

- This proposed act will create title 7A within Chapter 52 of the New Jersey Statutes replacing the provisions currently found in N.J.S. 52:7-10 to 52:7-21, governing notaries public and notarial officers.

NEW JERSEY NOTARIES PUBLIC ACT

| PROPOSED N.J.S. | TITLE | CURRENT N.J.S. | TITLE | COMMENT |
|----------------------------|--|---------------------------|---|---|
| 52:7A-1 | Short Title. | 52:7-10. | Short Title. | |
| 52:7A-2 | New Section | New Section | Definitions | RULONA, Section 2 |
| 52:7A-3 | Appointment; term; removal; application | 52:7-11 | Appointment; term, application; renewals | Removals addressed in N.J.S. 52:7A-6 |
| 52:7A-4 | Minimum Age. | 52:7-12 | Qualifications. | RULONA, Section 21 |
| 52:7A-5 | Appointment of nonresidents; requirements. | 52:7-13 | Appointment of nonresidents; requirements. | |
| 52:7A-6 | New Section | New Section | Grounds to Deny The Application, or Refuse to Renew, Revoke, Suspend, or Limit the Commission of a Notary Public | RULONA, Section 23, RULONA. Section 25 (including only subsections a.(1), (2)) |
| 52:7A-7 | New Section | New Section | Course of Study; Continuing Education | RULONA Section 22 |
| 52:7A-8 | New Section | New Section | Written Examination | RULONA, Section 22 |
| 52:7A-9 | Fee | 52:7-17 | Manual; Fee | |

DEFINITIONS



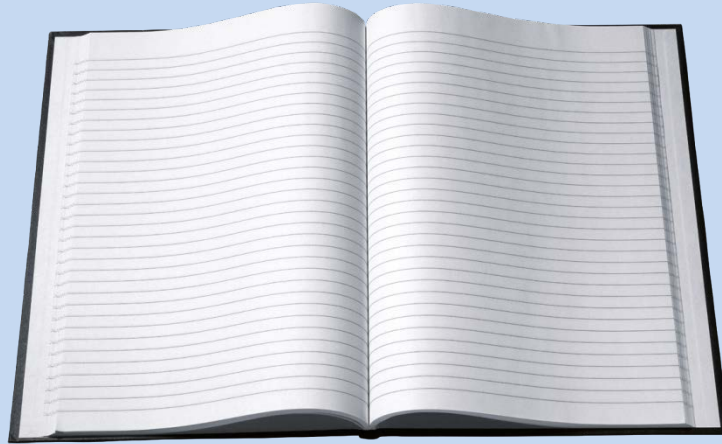
NOTARIAL ACT

- Includes tangible and electronic records.
- Performed by a notarial officer.
- Notarial Acts include:
 - Taking an acknowledgment;
 - Administering an oath;
 - Taking a verification on oath or affirmation;
 - Witnessing or attesting a signature;
 - Certifying or attesting a copy or deposition;
and
 - Noting a protest of a negotiable instrument.

NOTARIAL OFFICER

- A commissioned notary public or other individual authorized by law to perform a notarial act, including:
 - Attorneys
 - Judges
 - County clerks

KEY PROVISIONS

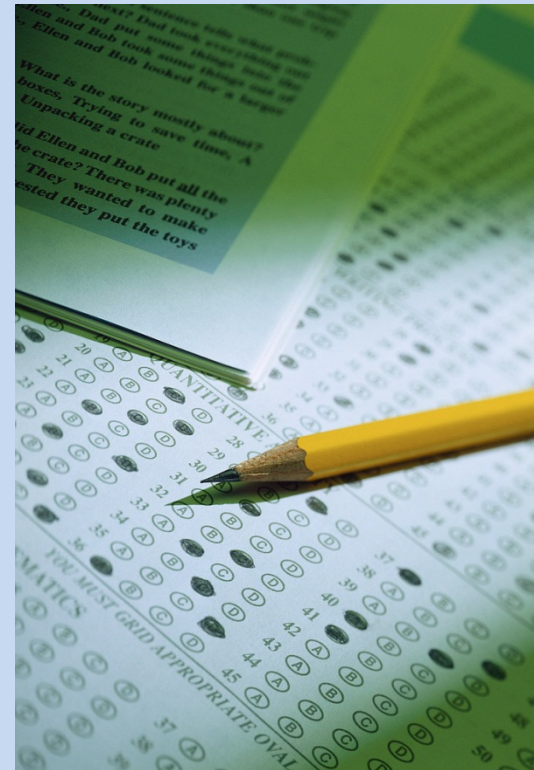


APPOINTMENT

- Retains language from the Notaries Public Act of 1979 - N.J.S. 52:7-11.
- *An applicant for commission shall make application to the State Treasurer on a form prescribed by the State Treasurer and endorsed by a member of the Legislature or the State Treasurer.*

QUALIFICATIONS

- Age
- Course of Study
- Written Examination



GROUNDINGS TO DENY

- For any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability necessary to act as a notary public, including:
 - a fraudulent, dishonest, or deceitful misstatement or omission in the application for commission as a notary public;
 - a finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on fraud, dishonesty, or deceit by the applicant or notary public;
 - failure by the notary public to discharge any duty required of a notary public.

NOTARIES PUBLIC WHO ARE NOT ATTORNEYS

- For a notary public who is not an attorney licensed to practice law, the Act prohibits the following:
 - giving legal advice;
 - acting as an immigration consultant or an expert on immigration matters; or
 - otherwise performing the duties of an attorney licensed to practice law in New Jersey; or
 - using or advertising the title of lawyer or attorney at law, or equivalent terms, in the English language or any other language, which may mean or imply that the person is licensed as an attorney at law in the State of New Jersey or in any other jurisdiction of the United States.

OTHER GROUNDS TO DENY

- **Withholding access to or possession of an original record or photocopy provided by a person that seeks performance of a notarial act by the notary public, except where allowed by law;**
- **denial of an application for notary public, or refusal to renew, revocation, suspension, or otherwise limiting the commission of the notary public in another state.**
- **DUE PROCESS PROVISION**

NEW JERSEY NOTARIES PUBLIC ACT

| | | | | |
|----------|--|------------------------|--|--------------------------------------|
| 52:7A-9 | Fee | 52:7-17 | Manual; Fee | |
| 52:7A-10 | Oath; filing; certificate of commission and qualification. | 52:7-14 | Oath; filing; certificate of commission and qualification. | |
| 52:7A-11 | Statement by notary public after change in name; filing; evidence of continuance of powers and privileges. | 52:7A-18 | Statement by notary public after change in name; filing; evidence of continuance of powers and privileges. | |
| 52:7A-12 | State-wide authority; filing of certificates of commission and qualification with county clerks; Affixation of Name. | 52:7-15 52:7-19 | State-wide authority; filing certificates of commission and qualification with county clerks. Affixation of name. | Subsection (c) is taken from 52:7-19 |
| | | 52:7-16 | County clerk to attach certificate of authority to notaries' certificates of proof; acknowledgments or affidavits. | Recommended for Repeal. |

NEW JERSEY NOTARIES PUBLIC ACT

| PROPOSED N.J.S. | TITLE | CURRENT N.J.S. | TITLE | COMMENT |
|----------------------------|--------------|---------------------------|---|--|
| 52:7A-13 | New Section | New Section | Certificate of Notarial Act. | RULONA, Section 15 (same title); omitting subsection b, which is included in N.J.S. 52:7A-15. |
| 52:7A-14 | New Section | New Section | Official Stamp. | RULONA, Section 17 and includes subsection b. of RULONA, Section 15. |
| 52:7A-15 | New Section | New Section | Stamping Device. | RULONA, Section 18 (same title). |
| 52:7A-16 | New Section | New Section | Authority to Perform Notarial Acts. | RULONA, Section 4 (same title). |
| 52:7A-17 | New Section | New Section | Requirements for Certain Notarial Acts. | RULONA, Section 5 (same title); Language in subsection b. is adapted from Section 7 of RULONA. |
| 52:7A-18 | New Section | New Section | Personal Appearance. | RULONA, Section 6 (same title) |

CERTIFICATE OF A NOTARIAL ACT

- A notarial act shall be evidenced by a certificate:
 - Executed contemporaneously with the performance of the notarial act;
 - Signed and dated by the notarial officer and, if the notarial officer is a notary public,
 - Signed in the same manner as on file with the State Treasurer.
- The certificate shall:
 - identify the county and state in which the notarial act is performed;
 - contain the title of office of the notarial officer;
 - indicate if the notarial officer is a notary public;
 - indicate the date of expiration of the commission of the notarial officer, if the notarial officer is a notary public.

OFFICIAL STAMP

- Official stamp provisions for tangible and electronic records.



PERSONAL KNOWLEDGE

- A notarial officer must determine:
 - From personal knowledge or satisfactory evidence of the identity of the individual,
 - that the individual appearing before the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

DOCUMENTS TO ESTABLISH IDENTITY

- A document issued to an individual by a government or government agency with a photographic image or physical description.



- Current or expired not more than three years before the performance of the notarial act.

PERSONAL APPEARANCE

- The Act requires personal appearance before the notarial officer by the individual making the statement or executing the signature.

NEW JERSEY NOTARIES PUBLIC ACT

| | | | | |
|----------|-------------|-------------|--|--|
| 52:7A-19 | New Section | New Section | Signature If Individual Unable to Sign. | RULONA, Section 9 (same title). |
| 52:7A-20 | New Section | New Section | Certificate Form. | RULONA, Section 16 (Short Form Certificates). |
| 52:7A-21 | New Section | New Section | Notarial Act In This State. | RULONA, Section 10 (same title). |
| 52:7A-22 | New Section | New Section | Notarial Acts That Are Not Performed Under The Authority of This State | Compiles portions of RULONA, Section 11 (Notarial Act in Another State); Section 12, Notarial Act Under the Authority of a Federally Recognized Indian Tribe; Section 13, Notarial Acts Under Federal Authority; and Section 14, Foreign Notarial Act. |

NOTARIAL ACTS PERFORMED OUTSIDE OF THE STATE

- Notarial acts are recognized, if performed:
 - in another state; or
 - under federal law, including an individual in military service or performing duties; or
 - under the authority of military service who is authorized to perform notarial acts under federal law; or
 - under the authority and in the jurisdiction of a federally recognized Indian tribe.

AUTHORITY TO REFUSE TO PERFORM

- A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:
 - the individual executing the record is competent or has the capacity to execute the record;
 - the individual's signature is knowingly and voluntarily made;
 - the individual's signature on the record or statement substantially conforms to the signature on a form of identification used to determine the identity of the individual; or
 - the physical appearance of the individual signing the record or statement substantially conforms to the photograph on a form of identification used to determine the identity of the individual.
- A provision is included that restricts refusal if the basis for refusal is prohibited by law.

NEW JERSEY NOTARIES PUBLIC ACT

| PROPOSED N.J.S. | TITLE | CURRENT N.J.S. | TITLE | COMMENT |
|----------------------------|--------------|---------------------------|---|----------------------------------|
| 52:7A-23 | New Section | New Section | Notification Regarding Performance of Notarial Act on Electronic Record; Selection of Technology. | RULONA, Section 20 (same title). |
| 52:7A-24 | New Section | New Section | Database of Notaries Public. | RULONA, Section 24 (same title). |
| 52:7A-25 | New Section | New Section | Authority To Refuse To Perform Notarial Acts. | RULONA, Section 8 (same title) |
| 52:7A-26 | New Section | New Section | Journal. | RULONA, Section 19 (same title) |
| 52:7A-27 | New Section | New Section | Validity of Notarial Acts. | RULONA, Section 26 (same title). |
| 52:7A-28 | New Section | New Section | Rules. | RULONA, Section 27 (same title). |

JOURNAL

- For each notarial act, the notary public must record in the journal:
 - (1) the date and time of the notarial act;
 - (2) the type of notarial act, including but not limited to the taking of an acknowledgment, the taking of a proof of a deed, the administering of an oath, or the taking of an affidavit;
 - (3) the name and address of each person for whom the notarial act is performed;
 - (4) identity of the individual is based on personal knowledge, a statement to that effect;

JOURNAL

- For each notarial act, the notary public must record in the journal:
 - (5) the identity of the individual is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including, if applicable, the type, date of issuance and date of expiration of an identification document, or the name and signature of any identifying witness and, if applicable, the type, date of issuance and date of expiration of a document identifying the witness; and
 - (6) the fee charged for the notarial act.
- The journal must be retained for 10 years after the performance of the last notarial act chronicled in the journal.

JOURNAL

52:7A-26. Journal

c. If a notary public's journal is lost or stolen, the notary public promptly must notify the State Treasurer on discovering that the journal is lost or stolen.

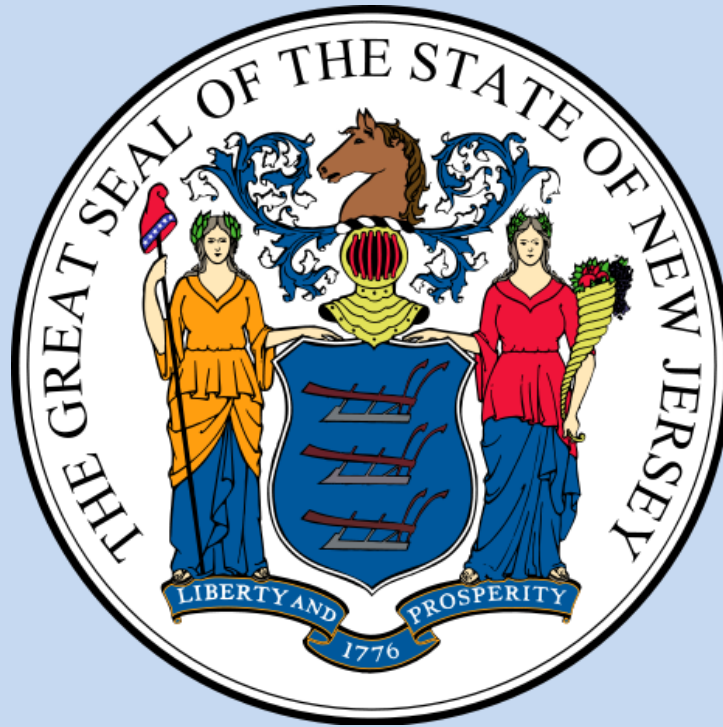
d. On resignation from, or the revocation or suspension of, a notary public's commission, the notary public must retain the notary public's journal in accordance with subsection a. and inform the State Treasurer where the journal is located.

JAYNE J. JOHNSON

- Jayne J. Johnson joined the New Jersey Law Revision Commission as a staff attorney in January 2013. Prior to joining the Commission, she worked as a legal fellow with the Institute on Education Law and Policy at Rutgers University School of Law in Newark.
- Mrs. Johnson is a licensed attorney in New Jersey who started her professional career as a judicial law clerk to the Honorable Lorraine Pullen, J.S.C. and the Honorable Jane Bruskin Cantor, J.S.C., Superior Court of New Jersey, Law Division, Middlesex County. She later worked as a pro bono law clerk to the Honorable Claire C. Cecchi, D.N.J., United States District Court of New Jersey.
- Mrs. Johnson studied abroad in Collonges-sous-Salève, France. She is a graduate of Oakwood University, B.A. in International Studies and Rutgers University School of Law in Newark.

NEW JERSEY NOTARIES PUBLIC ACT

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|----------|-------------|-------------|---|---|
| 52:7A-29 | New Section | New Section | Relation to Electronic Signatures In Global and National Commerce Act | RULONA, Section 31 – Relation to Electronic Signatures In Global and National Commerce Act. |
| 52:7A-30 | New Section | New Section | Repeals. | RULONA, Section 32 (same title) |
| 52:7A-31 | New Section | New Section | Effective Date | RULONA, Section 33 (same title); Omitted RULONA Section 3 – Applicability; Section 28 – Notary Public Commission In Effect; Section 29 – Savings Clause; Section 30 – Uniformity and Application and Construction |





REFERENCES

- (1) Michael L. Closen and G. Grant Dixon, III, *Notaries Public from the Time of the Roman Empire to the United States Today and Tomorrow*, 68 N.D. L. Rev., 874-876 (1992).
- (2) *Early State*, Eds. Henry J.M. Classen, Peter Slalnik, 223 (1978).
- (3) REVISED UNIF. L. ON NOTARIAL ACTS, Prefatory Note (July 2010), available at http://www.uniformlaw.org/shared/docs/notarial_acts/rulona_final_10.pdf.