

Kentucky Administrative Regulations

TITLE 30 SECRETARY OF STATE

Chapter 8. Notaries Public and Notarial Acts

- 010 Definitions for 30 KAR Chapter 8
- 020 Short form certificates for notarial acts
- [Reserved for other necessary areas of rulemaking, e.g., the commissioning process]

Chapter 9. Electronic and Online Notarization

- 010 Definitions for 30 KAR Chapter 9
 - 020 Registration by notary public for electronic notarization
 - 030 Standards for electronic notarization
 - 040 Standards for online notarization
 - 050 Record retention and repositories
-

30 KAR 8:010. Definitions for 30 KAR Chapter 8.

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.415

NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415 requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 423. This administrative regulation establishes definitions for 30 KAR Chapter 8.

Section 1. Definitions. (1) "Acknowledgment" means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

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

(3) "In a representative capacity" means acting as:

(a) An authorized officer, agent, partner, trustee, or other representative for a person other than an individual;

(b) A public officer, personal representative, guardian, or other representative, in the capacity stated in a record;

(c) An agent or attorney-in-fact for a principal; or

(d) An authorized representative of another in any other capacity.

(4) "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under KRS 423.310 and any other law of the Commonwealth.

(5) "Notarial officer" means a notary public or other individual authorized to perform a notarial act.

(6) "Notary public" means an individual commissioned to perform a notarial act by the Secretary of State. This term does not include other notarial officers who may perform a notarial act in this state.

(7) "Official stamp" means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record, including an official notary seal.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(9) "Verification on oath or affirmation" means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

30 KAR 8:020. Short form certificates.

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.365

NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.365 requires the Secretary of State to promulgate short form certificates for notarial acts under KRS Chapter 423. This administrative regulation establishes short form certificates for notarial acts with the information required by KRS 423.360(1) and (2).

Section 1. Short form certificates. The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by KRS 423.360(1) and (2).

(1) *For an acknowledgment in an individual capacity:*

Commonwealth of Kentucky
County of _____

This record was acknowledged before me on (Date) by (Name(s) of individual(s)).

Signature of notarial officer
[Official Stamp]
[Title of office]
My commission expires: _____.

(b) *For an acknowledgment in a representative capacity:*

Commonwealth of Kentucky
County of _____

This record was acknowledged before me on (Date) by (Name(s) of individual(s)) as (type of authority, such as officer or trustee) of (name of party on behalf of whom the record was executed).

Signature of notarial officer
[Official Stamp]
[Title of office]
My commission expires: _____.

(c) *For a verification on oath or affirmation:*

Commonwealth of Kentucky
County of _____

Signed and sworn to (or affirmed) before me on (Date) by (Name(s) of individual(s) making statement).

Signature of notarial officer
[Official Stamp]
[Title of office]
My commission expires: _____.

(d) *For witnessing or attesting a signature:*

Commonwealth of Kentucky
County of _____

Signed (or attested) before me on (Date) by (Name(s) of individual(s)).

Signature of notarial officer
[Official Stamp]
[Title of office]
My commission expires: _____.

(e) *For certifying a copy of a record:*

Commonwealth of Kentucky
County of _____

I certify that this is a true and correct copy of a record in the possession of _____.

Dated _____.

Signature of notarial officer
[Official Stamp]
[Title of office]
My commission expires: _____.

(f) *For certifying that a tangible copy of an electronic record is an accurate copy of the electronic record:*

Commonwealth of Kentucky
County of _____

I certify that the foregoing and annexed record [entitled _____ (document title, if applicable),] [dated _____ (document date, if applicable), and] containing ___ pages is an accurate copy of an electronic record.
Dated _____

Signature of notarial officer
[Official Stamp]
[Title of office]
My commission expires: _____.

30 KAR 9:010. Definitions for 30 KAR Chapter 9.

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.415

NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415 requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 423. This administrative regulation establishes definitions for 30 KAR Chapter 9.

Section 1. Definitions. (1) "Communication technology" means an electronic device or process that:

(a) Allows an online notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(b) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual with a vision, hearing, or speech impairment.

(2) "Credential" means one of the following types of government-issued identification credential that contains the signature and photograph of the individual and evidences the individual's identity:

(a) A non-expired passport, driver's license, or government-issued identification card; or

(b) Another current form of government identification issued to an individual that is satisfactory to the notary public.

(3) "Credential analysis" means a process or service that meets the standards under 30 KAR 9.040, Section 3, by which a third person provides confidence as to the validity of a credential through review of public and proprietary data sources.

(4) "Dynamic knowledge-based authentication assessment" means an identity assessment that is based on a set of questions formulated from public or private data sources for which the signer of an electronic record has not provided a prior answer;

(5) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

(6) "Electronic notarization" means a notarial act performed with respect to an electronic record while the notary public is in the physical presence of the individual making the statement in or executing a signature on the electronic record.

(7) "Electronic signature" means an electronic sound, symbol, or processed attached to or logically associated with an electronic record and executed or adopted by an individual with an intent to sign the record.

(8) "Identity proofing" means a process or service that meets the standards under 30 KAR 9.040, Section 3, by which a third person provides confidence as to the identity of an individual through review of personal information from public or proprietary data sources.

(9) "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notary public may perform under KRS Chapter 423 and any other law of this Commonwealth.

(10) "Notary public" means an individual commissioned to perform notarial acts by the Secretary of State.

(11) "Official stamp " means an electronic image attached to or logically associated with an electronic record, including an official notary seal.

(12) "Online notarization" means an electronic notarization performed for a remotely located individual facilitated by communication technology.

(13) "Online notary public " means a notary public who has registered with the Secretary of State pursuant to 30 KAR 9.020 to perform online notarizations.

(14) "Person " means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity;

(15) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

(16) "Remotely located individual" means an individual who is not in the physical presence of the online notary public who performed an online notarization or is appearing remotely before the online notary public.

(17) "Remote presentation" means transmission to an online notary public through communication technology of an image of a credential that is of sufficient quality to enable the online notary public to identify the individual seeking the online notary public's services and to perform credential analysis.

(18) "Stamping device" means an electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

30 KAR 9:020. Registration by notary public for electronic and online notarization.

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.390 and 423.415

NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.390(11) requires the Secretary of State to establish forms and procedures applicable to registrations for electronic and online notarizations. KRS 423.415 requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 423. This administrative regulation establishes requirements for registration by notaries public to perform electronic notarizations and online notarizations.

Section 1. Authority to perform electronic and online notarizations.

(1) Electronic notarization. An individual is authorized to perform electronic notarizations by:

(a) Being duly and currently commissioned as a notary public under KRS 423.300 to 423.455;

(b) Providing notification to the Secretary of State under Section 2 of this administrative regulation that the notary public will be performing electronic notarizations; and

(c) Receiving written authorization to perform electronic notarizations from the Secretary of State under Section 3 of this administrative regulation.

(2) Online notarization. An individual is authorized to perform online notarizations by:

(a) Being duly and currently commissioned as a notary public under KRS 423.300 to 423.455;

(b) Providing notification to the Secretary of State under Section 2 of this administrative regulation that the notary public will be performing online notarizations; and

(c) Receiving written authorization to perform online notarizations from the Secretary of State under Section 3 of this administrative regulation.

(3) An individual who is authorized to perform online notarizations under this section is also authorized to perform electronic notarizations.

Section 2. Registration procedures.

(1) Registration form. Registration under this section shall be by written notification to the Secretary of State that includes the following information:

(a) The individual's full legal name, the name under which the individual is commissioned as a notary public, if different, the individual's email address, and the individual's commission number as a notary public;

(b) The county in which the individual resides or has his or her place of employment or practice in this Commonwealth;

(c) An indication of whether the individual is registering to perform electronic notarizations or online notarizations;

(d) A description of the technologies or devices that the individual intends to use to perform electronic notarizations or online notarizations, including the technologies or devices to maintain the journal required under KRS 423.380;

(e) Access information for the digital certificate required under 30 KAR 9:030;

(f) The name, address, and website URL of any vendors or other persons that will directly supply to the notary public the technologies that the notary public intends to use;

(g) A statement that the technologies named in the notification are compliant with KRS Chapter 423 and with this chapter;

(h) A copy of a valid assurance in the form of a surety bond that the notary public has filed with a county clerk pursuant to KRS 423.390(4) and (5); and

(i) A disclosure of any professional license or commission revocations or other professional disciplinary actions taken under the laws of any state against the notary public.

(2) Submission of registration form. The notification must be submitted electronically to Secretary of State as provided by information posted on the secretary of state's website at <https://sos.ky.gov/>.

(3) Use of additional vendors. If, during the term of a notary public's commission, the notary public intends to use the technologies of another vendor or person than those identified in Section (1)(f) of this section, then an additional notification identifying such other vendors or other persons must be submitted to the Secretary of State as provided in this section.

(4) Registration fee. Each notification submitted under this section must be accompanied by a nonrefundable fee of \$10.

Section 3. Approval or disapproval by the Secretary of State.

(1) Approval of registration. If the technology identified by the notary public in the notification required under Section 2 of this administrative regulation conforms to the standards adopted under this chapter and the notary public satisfies the requirements of this section, the Secretary of State shall approve the use of the technology and issue to the notary public written authorization to perform electronic notarizations or online notarizations, as applicable.

(2) Disapproval of registration. The Secretary of State may disapprove the registration and reject the notary public's request for authorization for the following reasons:

(a) The notary public's failure to comply with KRS Chapter 423 or this chapter;

(b) Any information required under Section 2 of this administrative regulation is missing, inaccurate or incomplete; or

(c) The technology identified by the notary public does not conform to the standards adopted under this chapter.

(3) The Secretary of State shall notify the notary public of approval or disapproval of the registration within thirty (30) days after receipt of the notification under Section 2 of this administrative regulation. If the notary public's notification of registration is disapproved, the Secretary of State shall state the reasons for the disapproval.

Section 4. Renewal of commission. The renewal of the commission of a notary public who has previously received authorization to perform electronic notarizations or online notarizations under Section 1 of this administrative regulation constitutes renewal of the notary public's authorization without the necessity of submission of another notification under Section 2 of this administrative regulation.

Section 5. Updated technology. Nothing herein shall be construed to prohibit a notary public from receiving, installing, or using a hardware or software update to the technologies that the notary public identified under Section 2 of this administrative regulation if the hardware or software update does not result in technologies that are materially different from the technologies that the notary public identified.

30 KAR 9:030. Standards for electronic notarization.

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.415

NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415 requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 423. This administrative regulation establishes standards for the performance of electronic notarizations.

Section 1. Tamper-evident technology requirements. A notary public must select one or more tamper-evident technologies to perform electronic notarizations. A person may not require a notary public to use a technology that the notary public has not selected. The tamper-evident technology must consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology. A notary public must attach or logically associate the notary public's electronic signature and official stamp to an electronic record that is the subject of a notarial act by use of the digital certificate. A notary public may not perform an electronic notarization if the digital certificate:

- (1) Has expired;
- (2) Has been revoked or terminated by the issuing or registering authority;
- (3) Is invalid; or
- (4) Is incapable of authentication.

Section 2. Requirements of official stamp.

(1) A notary public is not required to use an official stamp when performing electronic notarizations or online notarizations.

(2) A notary public who uses an official stamp must use the same unique official stamp for all electronic notarizations or online notarizations, as applicable. An official stamp under this section is an official seal of office of the notary public for all purposes. An official stamp must conform to the following requirements:

(a) Required information. An official stamp shall substantially conform to the following design: a rectangular or circular seal with the notary public's name as it appears on the commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public's commission number, and the commission expiration date.

(b) Online notaries public. If an online notary public uses an official stamp to perform online notarizations, the official stamp must contain the words "Online Notary Public" in lieu of the words "Notary Public." A stamp that contains the words "Online Notary Public" may only be used to perform online notarizations.

(c) Format and size. When affixed to an electronic record, an official stamp must be clear, legible, and photographically reproducible. An official stamp is not required to be within a minimum or maximum size when photographically reproduced on an electronic record.

(3) If a notary public elects not to use an official stamp when performing electronic or online notarizations, the certificate of notarial act on the electronic record must:

- (a) Contain the name of the notary public as it appears on the notary public's commission;
- (b) Indicate the title "Notary Public" for any electronic notarization or "Online Notary Public" for any online notarization; and
- (c) Indicate the notary public's commission number and the commission expiration date.

Section 3. Use of electronic signature and stamping device. A notary public's electronic signature and stamping device must remain within the exclusive control of the notary public, including control by means of use of a password or other secure method of authentication. A notary public shall not disclose any access information used to affix the notary public's electronic signature or official stamp to electronic records, except:

- (1) When requested by the Secretary of State or a law enforcement officer;
- (2) When required by court order or subpoena; or
- (3) Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in 30 KAR 9:020, Section 2(1)(f).

Section 4. Protection against theft, vandalism or misuse.

(1) A notary public may not allow any other individual to use his or her official stamp or stamping device to perform a notarial act.

(2) Upon resignation, revocation, or expiration of the notary's commission, the notary public's stamping device (including any coding, disk, digital certificate, card, software, or password that enables the notary public to attach or logically associate the electronic official stamp to an electronic record) must be destroyed or disabled to prohibit its use by any other person. A former notary public whose commission terminated for a reason other than revocation or denial of renewal is not required to destroy the stamping device if the former notary public is recommissioned as a notary public within thirty days after the termination of the notary public's former commission.

(3) A notary public shall immediately notify an appropriate law enforcement agency and the Secretary of State on actual knowledge of the theft or vandalism of the notary public's electronic signature, digital certificate or stamping device. A notary public shall immediately notify the Secretary of State on actual knowledge of the unauthorized use by another person of the notary public's electronic signature, digital certificate or stamping device.

30 KAR 9:040. Standards for online notarization.

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.355, 423.415

NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.355 permits the Secretary of State to promulgate administrative regulations regarding the performance of online notarizations. KRS 423.415 requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 423. This administrative regulation establishes standards for the performance of online notarizations.

Section 1. Use of electronic notarization. In performing an online notarization, an online notary public must comply with the requirements for electronic notarization as provided in 30 KAR 9:030.

Section 2. Personal appearance required. If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature must appear personally before the notary public. A remotely located individual may comply with the requirement to appear personally before a notary public by appearing before

an online notary public by means of communication technology, provided the online notary public is physically located in this Commonwealth at the time of the performance of the online notarization.

Section 3. Identity proofing. If an online notary public does not have satisfactory evidence of the identity of a remotely located individual under Section 4 of this administrative regulation, the online notary public must reasonably verify the individual's identity through two (2) different types of identity proofing consisting of a multi-factor authentication procedure as provided in this section. The procedure shall analyze the individual's identity credential that is the subject of remote presentation against trusted third-person data sources, bind the individual's identity to the individual following successful dynamic knowledge-based authentication assessment, and permit the notary public visually to compare the identity credential and the individual. The analysis of the identity credential and the dynamic knowledge-based authentication assessment shall conform to the following requirements:

(1) Credential analysis. The analysis of an identity credential must use public or private data sources to confirm the validity of the identity credential that is the subject of remote presentation by a remotely located individual and shall, at a minimum:

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

(b) Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;

(c) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and

(d) Enable the online notary public visually to compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the online notary public in real time through communication technology.

(2) Dynamic knowledge-based authentication. A dynamic knowledge-based authentication assessment is successful if it meets the following requirements:

(a) The remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;

(b) Each question must have a minimum of five possible answer choices;

(c) At least 80% of the questions must be answered correctly;

(d) All questions must be answered within two minutes;

(e) If the remotely located individual fails the first attempt, the individual may retake the quiz one time within 24 hours;

(f) During a retake of the quiz, a minimum of 40% of the prior questions must be replaced;

(g) If the remotely located individual fails the second attempt, the individual is not allowed to retry with the same online notary public within 24 hours of the second failed attempt; and

(h) The online notary public must not be able to see or record the questions or answers.

Section 4. Other methods of identity verification. An online notary public has satisfactory evidence of the identity of a remotely located individual if the online notary public has personal

knowledge of the identity of the individual, if the individual is identified by oath or affirmation of a credible witness, or if the online notary has reasonably verified the identity of the individual by use of a valid public key certificate in accordance with the following requirements:

(1) Personal knowledge. An online notary public has personal knowledge of the identity of the individual appearing before the online notary public if the individual is personally known to the online notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) Credible witness. To be a credible witness, an individual must have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the online notarization. If the credible witness is a remotely located individual, then the online notary public must reasonably verify the credible witness's identity under Section 3 of this administrative regulation or have personal knowledge of the credible witness under subsection 1 of this section. A credible witness may be a remotely located individual if the online notary public, credible witness, and individual whose statement or signature is the subject of the online notarization can communicate by using communication technology.

(3) Public key certificate. The identity of the individual appearing before the online notary public may be verified by use of a valid public key certificate issued by a third person approved by the Secretary of State. The Secretary of State shall not approve third persons under this subsection unless the Secretary of State determines that the identity verification process used by the third person meets or exceeds the accuracy of the identity verification processes set forth in Section 3 of this administrative regulation.

Section 5. Requirements for communication technology. The communication technology used by an online notary public in the performance of online notarizations must conform to the following requirements:

(1) Audio-video feeds. Communication technology must provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the online notary public and remotely located individual to see and speak with each other. The process must provide a means for the online notary public reasonably to confirm that a record before the online notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(2) Security measures. Communication technology must provide reasonable security measures to prevent unauthorized access to:

(a) The live transmission of the audio-visual feeds;

(b) The methods used to perform the identify verification process under Sections 3 or 4 of this administrative regulation, as applicable; and

(c) The record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(3) Work flow. If a remotely located individual must exit the workflow, the individual must restart the identify verification process under Sections 3 or 4 of this administrative regulation, as applicable, from the beginning.

Section 6. Certificate of notarial act for online notarizations.

(1) Sufficient statement. A form of certificate for an online notarization is sufficient if it is in the form provided by applicable law and contains a statement substantially as follows: "This notarial act involved the use of communication technology."

(2) Sufficient forms. A short form certificate provided in 30 KAR 8:020 or an acknowledgment form prescribed in KRS 423.160 is sufficient for an online notarization if it is in substantially one of the following forms for the purposes indicated:

(a) *For an acknowledgment in an individual capacity:*

Commonwealth of Kentucky
County of _____

This record was acknowledged before me by means of communication technology on (Date) by (Name(s) of individual(s)).

Signature of online notary public
[Official Stamp]
Online Notary Public
My commission expires: _____.

(b) *For an acknowledgment in a representative capacity:*

Commonwealth of Kentucky
County of _____

This record was acknowledged before me by means of communication technology on (Date) by (Name(s) of individual(s)) as (type of authority, such as officer or trustee) of (name of party on behalf of whom the record was executed).

Signature of online notary public
[Official Stamp]
Online Notary Public
My commission expires: _____.

(c) *For a verification on oath or affirmation:*

Commonwealth of Kentucky
County of _____

Signed and sworn to (or affirmed) before me by means of communication technology on (Date) by (Name(s) of individual(s) making statement).

Signature of online notary public
[Official Stamp]
Online Notary Public
My commission expires: _____.

(d) *For witnessing or attesting a signature:*

Commonwealth of Kentucky
County of _____

Signed (or attested) before me by means of communication technology on (Date) by (Name(s) of individual(s)).

Signature of online notary public
[Official Stamp]
Online Notary Public
My commission expires: _____.

(e) *Certificate of acknowledgement executed for a corporation:*

Commonwealth of Kentucky
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (Date) by (Name of officer or agent, title of officer or agent) of (Name of corporation acknowledging), a (State or place of incorporation) corporation, on behalf of the corporation.

Signature of online notary public
[Official Stamp]
Online Notary Public
My commission expires: _____.

(f) *Certificate of acknowledgement executed for a partnership:*

Commonwealth of Kentucky
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (Date) by (Name of acknowledging partner or agent), partner (or agent) on behalf of (Name of partnership), a partnership.

Signature of online notary public
[Official Stamp]
Online Notary Public
My commission expires: _____.

(g) *Certificate of acknowledgement executed for an individual acting as principal by an attorney-in-fact.*

Commonwealth of Kentucky
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (Date) by (Name of attorney-in-fact) as attorney-in-fact on behalf of (Name of principal).

Signature of online notary public
[Official Stamp]
Online Notary Public
My commission expires: _____.

(h) *Certificate of acknowledgement executed by any public officer, trustee, or personal representative:*

Commonwealth of Kentucky
County of _____

The foregoing instrument was acknowledged before me by means of communication technology this (Date) by (Name and title of position).

Signature of online notary public
[Official Stamp]
Online Notary Public
My commission expires: _____.

30 KAR 9:050. Record retention and repositories.

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.355, 423.415, 423.455

NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.355 and 423.455 permit the Secretary of State to promulgate administrative regulations regarding the performance of online notarizations. KRS 423.415 requires the Secretary of State to promulgate administrative regulations implementing KRS Chapter 423. This administrative regulation establishes standards for the retention of records and repositories of records for online notarizations.

Section 1. Record retention.

(1) An online notary public must retain an electronic journal created under KRS 423.380 and an audio-visual recording required under KRS 423.380(4) and 423.455(2)(c) in a computer or other electronic storage device that protects the electronic journal and audio-visual recording against unauthorized access by password or cryptographic process. The recording

must be created in an industry-standard audio-visual file format and must not include images of any record in which a remotely located individual made a statement or on which the remotely located individual executed a signature.

(2) An electronic journal must be retained for at least ten (10) years after the last notarial act chronicled in the journal. An audio-visual recording must be retained for at least ten (10) years after the recording is made.

(3) An online notary public must take reasonable steps to ensure that a backup of the electronic journal and audio-visual recording exists and is secure from unauthorized use.

(4) On the death or adjudication of incompetency of a current or former online notary public, the online notary public's personal representative or guardian or any other person knowingly in possession of an electronic journal or audio-visual recording must:

(a) Comply with the retention requirements of this subsection;

(b) Transmit the journal and recording to one or more repositories under Section 2 of this administrative regulation; or

(c) Transmit the journal and recording in an industry-standard readable data storage device to the secretary of state at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, KY 40602.

Section 2. Repositories. An online notary public, a guardian, conservator, or agent of an online notary public, or a personal representative of a deceased online notary public may, by written contract, engage a third person to act as a repository to provide the storage required by Section 1 of this administrative regulation. A third person under contract under this section shall be deemed a repository or custodian under KRS 423.380(8) or KRS 423.455(5), as applicable. The contract shall:

(1) Enable the online notary public, the guardian, conservator, or agent of the online notary public, or the personal representative of the deceased online notary public to comply with the retention requirements of Section 1 of this administrative regulation even if the contract is terminated; or

(2) Provide that the information will be transferred to the online notary public, the guardian, conservator, or agent of the online notary public, or the personal representative of the deceased online notary public if the contract is terminated.