

SECRETARY OF STATE
(As Amended at ARRS, June 9, 2020)

30 KAR 8:005. Notary public application; requirements for notarial acts performed with respect to electronic records and for remotely located individuals; notary public discipline [Notary Public applications and electronic and online registrations].

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.355, 423.390, 423.395, 423.415, 423.455

NECESSITY, FUNCTION, AND CONFORMITY: KRS **423.355** [~~423.415, KRS 423.390~~], 423.415, and 423.455 authorize the Secretary of State to promulgate administrative regulations to implement KRS **423.300** [~~423.415~~] to 423.455, **and KRS 423.390 requires the Secretary of State to promulgate administrative regulations to establish forms and procedures applicable to the registration of notaries public.** This [~~emergency~~] administrative regulation establishes definitions, prescribes the process of granting, renewing, conditioning, or denying a notary commission, establishes standards for the performance of notarial acts with respect to electronic records, establishes standards for the performance of online notarial acts, establishes standards for the retention of records [~~and~~] by notaries public authorized to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, and prescribes the manner of performing notarial acts for tangible records.

Section 1. Definitions. [~~Words and terms defined in KRS 423.300 shall have the same meaning in this chapter. For the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.~~]

~~(1)(a)~~ "Digital Certificate" means an electronic record, issued by a third-party certificate authority, which certifies the ownership of a public key, rendering an electronic document as tamper-evident.

~~(2)(b)~~ "Electronic record" means information contained in or on a medium that requires electricity to be perceived. [~~Member of the notary public's immediate family" means a spouse, former spouse, a grandparent, a grandchild, a parent, a child, a stepchild or any other person living in the same household.~~]

~~(3)(c)~~ "Notary technology" means an electronic device or process that allows a notary public to perform notarial acts with regard to electronic documents with or without the use of communication technology.

~~(4)~~ "Online notary public" means a notary public who has registered to perform electronic notarizations. [~~"Online notarial act" means an electronic notarization performed for a remotely located individual facilitated by communication technology.~~]

~~(d)~~ "Notary technology" means an electronic device or process that allows a notary public to perform notarial acts with regard to electronic documents with or without the use of communication technology.

~~(5)(e)~~ "Tangible record" means information contained in or on a medium, whether an original or duplicate, that can be perceived without the requirement of electricity.

Section 2. Notary Public Application, Approval or Denial of Application, Voluntary Termination, and Required Notice of Change of Information.

~~(1)(a)~~ Application. An application for a commission as a notary public shall be submitted on a form provided for that purpose by the Office of the Secretary of State or submitted on an electronic portal established by the Office of the Secretary of State for that purpose. A person who executes an application for filing with the Secretary of State shall be deemed to have

declared under penalty of perjury that to the person's knowledge, the contents of the application are true. Every application for a notarial commission **shall [must]** include:

(a)[(1)] The full legal name of the applicant;

(b)[(2)] The email address of the applicant;

(c)[(3)] A telephone number for the applicant;

(d)[(4)] The signature of the applicant;

(e)[(5)] The county for which the application is being made;

(f)[(6)] The physical and mailing address within the county of application where the applicant resides or is employed;

(g)[(7)] A statement of whether the applicant has previously held a notary commission, the name under which the applicant was previously commissioned, and the date at which the most recent commission expired;

(h)[(8)] A statement that the applicant is at least eighteen years of age;

(i)[(9)] A statement that the applicant is a citizen or permanent legal resident of the United States;

(j)[(10)] A statement that the applicant is able to read and write English;

(k)[(11)] A statement identifying the surety provider from which the applicant intends to obtain surety;

(l)[(12)] A statement that the applicant is not disqualified from becoming a notary public under the provision of KRS Chapter 423 or this **administrative regulation [chapter]**;

(m)[(13)] A statement that the applicant is not disqualified for any reason under Section **2(3)(a)-(f) of this administrative regulation [(2)(a)-(e)]**; and

(n)[(14)] Payment of the required fee.

(2)[(b)] Approval or Denial of Application. **(4)** Approval of Application. If the applicant has complied with the provisions of KRS Chapter 423 and this **administrative regulation [chapter]**, the application shall be approved. A notary commission **shall be [is]** effective as of the date of entry of that commission in the database of **notaries public [notary publics]** on the website of the Secretary of State.

(3)[(2)] Disapproval of Application. The Secretary of State may disapprove the application for the following reasons:

(a)[(i)] The **applicant's [notary public's]** failure to comply with KRS Chapter 423 or the provisions of this **administrative regulation [chapter]** or the existence of a pending inquiry regarding the **applicant's [notary public's]** failure to comply with KRS Chapter 423 **or [and]** this **administrative regulation [chapter]**;

(b)[(ii)] Any information required under this administrative regulation is missing, inaccurate, incomplete, or cannot be independently verified;

(c)[(iii)] A fraudulent, dishonest, or deceitful misstatement or omission of fact in the submitted application;

(d)[(iv)] A finding against, or admission of liability by, the applicant in any legal proceeding or disciplinary action based on the applicant's fraud, dishonesty, or deceit;

(e)[(v)] The denial, refusal to renew, revocation, or suspension of an applicant's notary commission or registration in another state; or

(f)[(vi)] Failure of the applicant to maintain **the required surety bond[an assurance]**.

(4)[(3)] If the application or registration is disapproved, the Secretary of State **shall [will]** state the reasons for the disapproval.

(5)[(e)] Voluntary Termination of Notary Commission. A notary public may terminate **his or her [a notary]** commission by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of

State for that purpose. Submission of a notification of termination of a notary commission **shall** automatically **terminate** ~~[terminates]~~ any notary registration.

~~(6)(d)~~ Change of Information. A notary public **shall** ~~[must]~~ notify the Office of the Secretary of State, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602, **on a form promulgated by the Office of the Secretary of State for that purpose or on any electronic portal created by the Office of the Secretary of State for that purpose, during the period of the notary's commission and within ten (10) days of the change in any of the following information** ~~[of any change of the following information during the period of the notary's commission, within ten days of the change, on a form promulgated by the Office of the Secretary of State for that purpose or on any electronic portal created by the Office of the Secretary of State for that purpose]~~:

~~(a)(i) A change in~~ The **notary's** mailing, physical or electronic mail address ~~[of the notary public]~~;

~~(b)(ii) A change in~~ The **notary's** county of residence ~~[of the notary public]~~;

~~(c)(iii) A change in~~ The **notary's** legal name ~~[of the notary public]~~;

~~(d)(iv) A change in~~ The **notary's** ~~[notary public's]~~ signature;

~~(e)(v) A change in~~ The **notary's** ~~[notary public's]~~ electronic signature, if any; **or** ~~[and]~~

~~(f)(vi) A change in~~ The notary technology used by the notary public.

Section 3. **Registration to Perform Notarial Acts with Respect to Electronic Records and Electronic Notarizations**; ~~Electronic and Online notarization~~. ~~(1)(a)~~ Authority to perform electronic and online notarial acts. ~~[(1) Electronic notarial acts.] A notary public~~

~~[An individual] shall register [is authorized]~~ to perform notarial acts with respect to electronic records by: ~~[(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010 and KAR 8:005 Section 2;~~

~~(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform electronic notarial acts; and~~

~~(iii) Receiving written authorization to perform electronic notarial acts from the Secretary of State under Section 3 of this administrative regulation.~~

~~(2) Online notarial acts. An individual is authorized to perform online notarial acts by:~~

~~(i) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS 423.010;~~

~~(ii) Registering with the Secretary of State under Section 2 of this administrative regulation to perform online notarial acts; and~~

~~(iii) Receiving written authorization to perform online notarial acts from the Secretary of State under Section 3 of this administrative regulation.~~

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

~~(b) Registration procedures.~~

~~(1) Registration format. Registration under this section shall be by electronic registration] submitting the following information~~ to the Secretary of State ~~[pursuant to KRS 423.390 and shall include the following information]~~:

~~(a)(i)~~ The **registrant's** ~~[individual's]~~ full legal name;

~~(b)(ii)~~ The county in which the **registrant** ~~[individual]~~ resides or has his or her place of employment or practice in this Commonwealth;

~~(c)(iii)~~ The registrant's date of birth;

~~(d)(iv)~~ The registrant's notary identification number and the expiration date of the registrant's notary commission;

~~(e)(v)~~ The electronic mail address ~~[, physical]~~ and mailing address where the registrant resides or is employed;

~~(f)(vi)~~ An indication of whether the registrant [individual] is registering to perform [electronic] notarial acts with respect to electronic records or electronic notarizations ~~[online notarial acts]~~, or both;

~~(g)(vii)~~ A description of the notary technology that the registrant [individual] intends to use to perform [electronic] notarial acts with respect to electronic records or electronic notarizations[and/or online notarial acts], or both, including the technologies or devices to maintain the journal required under KRS 423.380 and to render electronic records tamper-evident after a notarial act is completed;

~~(h)(viii)~~ A copy of the registrant's [applicant's] electronic signature, the digital certificate required under ~~[30 KAR 8:005]~~ Section 4 of this administrative regulation, the official stamp, if any, along with any necessary instructions or techniques supplied by a vendor or notary that allows the signature and stamp to be read and authenticated~~[,]~~ in a portable document format (.pdf) ~~[file format][acceptable to the Secretary of State]~~;

~~(i)(ix)~~ The name, address, and Web site URL of any vendors or other persons that shall [will] directly supply the registrant [notary public] with technology that he or she [the notary public] intends to use;

~~(j)(x)~~ A statement of whether the notary technology provider has registered with the Secretary of State;

~~(k)(xi)~~ A copy of any necessary instructions or techniques supplied by a vendor that allow the registrant [notary] to conduct identity proofing and credential analysis;

~~(l)(xii)~~ An explanation of the methods or technology by which the registrant [notary] shall [will] maintain and store the journal required by KRS 423.380;

~~(m)(xiii)~~ A statement that the technologies or devices named in the registration are compliant with KRS Chapter 423 and ~~[with]~~ this administrative regulation [chapter];

~~(n)(xiv)~~ A copy of the registrant's ~~[The county, book and page where the notary's]~~ surety bond in the amount of \$1,000[is recorded]; and

~~(o)(xv)~~ A disclosure of any convictions, professional license or commission revocations, professional disciplinary actions, or other disqualifying actions or proceedings taken under the laws of any state against the registrant [notary public].

(2) Submission of registration form. The registration form shall [must] be submitted electronically to the Secretary of State as provided by information posted on the Secretary of State's Web site at <https://sos.ky.gov/>.

(3) Use of additional vendors. If, during the term of his or her [a notary public's] commission, a [the] notary public intends to use the technologies of a [another] vendor or person other than those identified in subsection [Section] (1)(i) of this Section, then an additional notification identifying the [such] other vendors or ~~[other]~~ persons shall [must] be submitted to the Secretary of State as provided in this Section and in accordance with the manner established by the Secretary of State as posted on the Secretary of State's Web site at <https://sos.ky.gov/>.

~~(4)(a)(e)~~ Approval or disapproval by the Secretary of State. ~~[(f)]~~ Approval of registration. ~~[the provider of the technology identified by the notary public in the registration required under Section 2 of this administrative regulation has registered with the Secretary of State, and]~~ the registrant has complied with the provisions of KRS Chapter 423 and this administrative regulation [chapter], the registration to perform notarial acts with respect to electronic records shall be approved within thirty (30) days of its submission. A registration shall be [is] effective as of the date of entry of that registration in the database of the Secretary of State.

~~(b)(2)~~ Disapproval of registration. The Secretary of State may disapprove **and reject a** ~~[the]~~ registration **[and reject the notary public's registration]** for the following reasons:

~~1.(i)~~ The **registrant's [notary public's]** failure to comply with KRS Chapter 423 or the provisions of this **administrative regulation [chapter]** or a pending inquiry regarding the **registrant's [notary public's]** failure to comply with KRS Chapter 423 **or [and]** this **administrative regulation [chapter]**;

~~2.(ii)~~ Any information required under **this** Section ~~[2 of this administrative regulation]~~ is missing, inaccurate, or incomplete;

~~3.(iii)~~ A fraudulent, dishonest, or deceitful misstatement or omission in the submitted registration;

~~4.(iv)~~ A finding against, or admission of liability by, the registrant in any legal proceeding or disciplinary action based on the registrant's fraud, dishonesty, or deceit;

~~5.(v)~~ Denial, refusal to renew, revocation, or suspension of a notary commission or registration in another state; **or**

~~6.(vi)~~ Failure of the **registrant [notary]** to maintain **a surety bond in the amount of \$1,000**~~[an assurance; or~~

~~(vii) The provider of the technology identified by the notary public has not registered with the Secretary of State].~~

~~(5)(3)~~ If the **[notary public's]** registration is disapproved, the Secretary of State **shall [will]** state the reasons for the disapproval.

~~(6)(d)~~ Termination of electronic registration. A notary public may terminate an electronic registration by notifying the Office of the Secretary of State of that intent, in writing at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, Kentucky 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose. Termination of a **notary's [notary public's]** electronic registration **shall [does]** not terminate **his or her [a notary public's]** commission.

~~(7)(e)~~ Renewal of commission. The renewal of the commission of a notary public who has previously registered to perform notarial acts with regard to electronic records or online notarizations under **this** Section ~~[1 of this administrative regulation]~~ constitutes renewal of **his or her [the notary public's]** registration without the necessity of submitting another registration **pursuant to [under]** this **Section [administrative regulation]**.

~~(8)(f)~~ Updated technology. Nothing **in this Section [herein]** shall be construed to prohibit a notary public from receiving, installing, or using a hardware or software update to the technologies that **he or she [the notary public]** identified under **this** 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.

Section 4. Standards for **the Performance of Notarial Acts with Respect to Electronic Records**~~[notarization of electronic documents].~~ ~~(1)(a)~~ Tamper-evident technology requirements. A notary public **shall [must]** select one ~~(1)~~ or more tamper-evident technologies to perform notarizations with regard to electronic records. No person **shall [may]** require a notary public to use a technology that the notary public has not selected. The tamper-evident technology **shall [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 **shall [must]** attach or logically associate **his or her [the notary public's]** electronic signature and official stamp, if any, to an electronic record that is the subject of a notarial act by use of the digital certificate. A notary public **shall [may]** not perform an electronic notarization if the digital certificate:

~~(a)(1)~~ Has expired;

~~(b)(2)~~ Has been revoked or terminated by the issuing or registering authority;

~~(c)(3)~~ Is invalid; or

~~(d)(4)~~ Is incapable of authentication.

~~(2)(a)(b)~~ Requirements of official stamp. ~~(1)~~ A notary public shall [is] not be required to use an official stamp when performing notarial acts with respect to electronic records.

~~(b)(2)~~ A notary public who uses an official stamp shall [must] use the same unique official stamp for all notarial acts with respect to electronic records that are performed for an individual that is not remotely located. An official stamp under this Section is an official seal of office of the notary public for all purposes. An official stamp shall [must] conform to the following requirements:

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

2.~~(ii)~~ Format and size. When affixed to an electronic record, an official stamp shall [must] be clear, legible, and photographically reproducible. An official stamp shall [is] not be 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 notarial acts with respect to electronic records, the certificate of the notarial act on the electronic record shall [must]:

~~(a)(i)~~ Contain the name of the notary public as it appears on his or her [the notary public's] commission;

~~(b)(ii)~~ Indicate the title "Notary Public" for any notarial act with respect to electronic records; and

~~(c)(iii)~~ Indicate the notary's [notary public's] commission number and ~~[the]~~ commission expiration date.

~~(4)(e)~~ Use of electronic signature and stamping device. A notary public shall [is] be responsible for the security of his or her [the notary public's] stamping device and shall [may] not allow another individual to use the device to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the notary signature and stamping device and shall not disclose any access information used to affix his or her [the notary public's] electronic signature or official stamp to electronic records, except:

~~(a)(1)~~ When requested by the Secretary of State or a law enforcement officer;

~~(b)(2)~~ When required by court order or subpoena; or

~~(c)(3)~~ Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in ~~[30 KAR 8:005,]~~ Section 5~~(6)(a) of this administrative regulation [(g)]~~.

~~(5)(a)(d)~~ Protection against theft, alteration, or misuse. ~~(1)~~A notary public shall [may] not allow any other individual to alter or use his or her electronic signature, notary technology, official stamp, or stamping device to perform a notarial act.

~~(b)(2)~~ Upon resignation, revocation, or expiration of the notary's commission, his or her [the notary public's] notary technology and electronic stamping device (including any coding, disk, digital certificate, card, software, or password that enables the notary public to attach or logically associate the notary's electronic signature or official stamp to an electronic record) shall [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 his or her [the notary public's] notary technology or electronic

stamping device if the former notary public is recommissioned as a notary public within thirty ~~(30)~~ days after the termination of ~~his or her [the notary public's]~~ former commission.

~~(c)(3)~~ A notary public shall promptly notify the Secretary of State on actual knowledge of the theft or vandalism of the ~~notary's [notary public's]~~ notary technology or electronic stamping device. A notary public shall promptly notify the Secretary of State on actual knowledge of the unauthorized use by another person of the ~~notary's [notary public's]~~ electronic signature, notary technology, or electronic stamping device.

~~(6)(e)~~ Tangible copies of an electronic record. A notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record if the notary has taken reasonable steps to confirm the accuracy of that certification.

Section 5. Standards for Electronic Notarizations ~~[online notarial acts]~~. ~~(1)(a)~~ Notarial acts with respect to electronic records. In performing electronic notarizations ~~[online notarial acts with respect to electronic records]~~, an online notary public ~~shall [must]~~ comply with the registration requirements ~~[for electronic notarization as provided in 30 KAR 8:005] in [of]~~ Section 3 and the standards for notarial acts with respect to electronic records in Section 4 of this administrative regulation.

~~(2)(b)~~ Requirements of official stamp.

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

~~(2) A notary public who uses an official stamp must use the same unique official stamp for all notarizations involving online notarial acts. 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:~~

~~(i) 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.~~

~~(ii) Online notarial acts.] If used for electronic notarizations, an online notary public may use [uses an official stamp to perform online notarial acts,] an [the] official stamp that shall contain [must contains] the words "Online Notary Public" in lieu of the words "Notary Public." A stamp that contains the words "Online Notary Public" shall [may] only be used to perform notarizations with regard to remotely located individuals. [~~

~~(iii) 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 online notarial acts the certificate must:~~

~~(i) Contain the name of the notary public as it appears on the notary public's commission;~~

~~(ii) Indicate the title "Online Notary Public" for any notarial act with respect to a remotely located individual; and~~

~~(iii) Indicate the notary public's commission number and the commission expiration date.]~~

~~(3)(e)~~ Physical location. An online notary public shall be physically located in this Commonwealth at the time of the performance of the online notarization.

~~(4)(d)~~ Identity proofing. An online notary public shall have 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 an online notary public does not have personal knowledge ~~[or satisfactory evidence]~~ of the identity of a remotely located individual ~~[as defined in Section 5]~~, the online notary public **shall [must]** reasonably verify the individual's identity through at least two **(2)** different types of identity proofing processes or services. Those processes shall include remote presentation of an appropriate **government-issued identification card that contains the signature and photograph of [by]** the remotely located individual, credential analysis of that **government-issued identification card [credential]** by a service or process that analyzes the person's identity credential, binds the individual's identity to the individual following a successful dynamic knowledge-based authentication assessment, and permits the notary to visually compare the identity credential and the individual. The analysis of the **government-issued identification card [identity credential]** and the dynamic knowledge-based authentication assessment shall conform to the following requirements:

(a)[(1)] Credential analysis. The analysis **of a government-issued identification card [an identity credential]** **shall [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, **at a minimum**, shall ~~[, at a minimum]~~:

1.[(i)] Use automated software processes to aid the online notary public in verifying the identity of each remotely located individual;

2.[(ii)] 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;

3.[(iii)] 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

4.[(iv)] Enable the online notary public to visually 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.

(b)[(2)] Dynamic knowledge-based authentication. A dynamic knowledge-based authentication assessment **shall be [is]** successful if it meets the following requirements:

1.[(i)] The remotely located individual **shall [must]** answer a minimum of five **(5)** questions related to the individual's personal history or identity formulated from public or private data sources;

2.[(ii)] Each question **shall [must]** have a minimum of five **(5)** possible answer choices;

3.[(iii)] At least **eighty (80) percent [80%]** of the questions **shall [must]** be answered correctly;

4.[(iv)] All questions **shall [must]** be answered within two **(2)** minutes;

5.[(v)] If the remotely located individual fails the first attempt, the individual may attempt the authentication assessment one **(1)** additional time within twenty-four (24) hours;

6.[(vi)] During the second authentication assessment, a minimum of forty (40) percent of the prior questions **shall [must]** be replaced;

7.[(vii)] If the remotely located individual fails the second authentication assessment, the individual **shall [is]** not **be** allowed to attempt identity authentication with the same online notary public within twenty-four (24) hours of the second failed authentication assessment; and

8.[(viii)] The online notary public **shall [must]** not be able to see or record the questions or answers.[]

(e) 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, or 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, 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.]~~

~~(c)1.[(3)] Public key certificate. [(i)] The identity of the individual appearing before the online notary public may be verified by use of a valid public key certificate that meets the requirements of a digital certificate, [as that term is defined in 30 KAR 8:005 Section 1;] complies with the X.509 standard adopted by the International Telecommunication Union or a similar industry-standard technology, [i;] and is issued by a technology provider or digital certificate service registered with the Secretary of State pursuant to [Section 7 of] this administrative regulation.~~

~~2.[(ii)] A public key certificate shall [is] not be valid for identity verification if the public key certificate has expired, has been revoked or terminated by the issuing or registering authority, is invalid, or is incapable of authentication.~~

~~(5) [(f)] Requirements for communication technology. The communication technology used by an online notary public in the performance of online notarizations shall [must] conform to the following requirements:~~

~~(a) [(4)] Audio-video feeds. Communication technology shall [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 shall [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.~~

~~(b) [(2)] Security measures. Communication technology shall [must] provide reasonable security measures to prevent unauthorized access to:~~

~~1. [(i)] The live transmission of [the] audio-visual feeds;~~

~~2. [(ii)] The methods used to perform the identify verification process under subsection 4 of this Section [Sections 3 or 4 of this administrative regulation, as applicable]; and~~

~~3. [(iii)] The record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.~~

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

~~(d) [(4)] Recording. All notarial acts performed using communication technology shall [must] be electronically recorded. The recording shall contain a recitation that the notary has~~

informed the individuals participating in the notarial act that it **shall** ~~[will]~~ be electronically recorded.

(6)(a)(g) Notary technology provider registration. ~~[(1)]~~ A provider of technology used in the process of electronic or online notarization **shall** ~~[must]~~ register with Secretary of State in the manner directed by the Secretary of State and provide the following information:

1.((#)) The legal name of the technology provider;

2.((#)) The mailing address of the technology provider;

3.((#)) The physical address of the technology provider;

4.((#)) A designated contact person for that provider;

5.((#)) The phone number, physical address, and email address of the contact person;

6.((#)) The name of the technology provided;

7.((#)) The name of the provider or providers of the knowledge-based authentication, credential analysis, or digital certificate services, if different from the technology provider;

8.((#)) A description of the technology used and the manner in which it complies with KRS Chapter 423 and this **administrative regulation** ~~[chapter]~~;

9.((#)) The process by which the technology provider verifies the identity of the notary public or digital certificate holder using the technology;

10.((#)) A plan for the retention and disposition of records created, generated, or retained in conjunction with the use of the technology, including ~~[, but not limited to,]~~ any electronic journal, recordings, or records created or retained during an electronic or online notarization, in the event the technology provider no longer engages in the business of providing electronic or online notary technology; and

11.((#)) An authorized certification that the technology provided complies with KRS Chapter 423 and this **administrative regulation** ~~[chapter]~~.

(b)(2) A registration in compliance with this **subsection** ~~[section]~~ is non-transferable and **shall** ~~[may]~~ not be conveyed to any other notary technology provider.

(7)(a)(#) Complaint Against a Notary Technology Provider. ~~[(1)]~~ A written complaint may be made against a notary technology provider registered with the Office of the Secretary of State. A complaint that does not comply with the requirements of this **subsection** ~~[section]~~ **shall** ~~[will]~~ not be filed, responded to, or acted upon by the Secretary of State.

(b)(2) The Office of the Secretary of State may commence an investigation of a registered notary technology provider as a result of a complaint or upon its own initiative.

(c)(3) An investigation under this **subsection** ~~[section]~~ may include:

1.((#)) An initial request for information from the accused provider;

2.((#)) A copy of the complaint forwarded to the registration provider; and

3.((#)) A request for supporting documentation and other sources of information.

(d)(4) A provider shall provide true, accurate, and complete copies of all information requested by the Office of the Secretary of State.

(e)(5) Failure of a provider to comply with an investigation directive may result in revocation of the provider's registration.

(f)(6) A finding that the provider has failed to comply with the provisions of KRS Chapter 423 or this **administrative regulation** ~~[chapter]~~ may result in revocation of the provider's registration.

(8)(i) Duties of Notary Technology Provider. A notary technology provider **shall** ~~[must]~~:

(a)(1) Respond to a request for information from the Office of the Secretary of State within the time directed. Any request for information **shall** ~~[will]~~ be sent to the addresses provided upon registration;

(b)(2) Take reasonable steps to ensure that a notary public or digital certificate holder is able to use the technology provided in accordance with this administrative regulation ~~[chapter]~~; and

(c)(3) Suspend the use of any technology for any notary or digital certificate holder whose commission, registration, or digital certificate has expired, been revoked, or ~~[been]~~ suspended.

Section 6. ~~[Electronic and Online]~~ Record Retention Requirements for Notarial Acts with Respect to Electronic Records and Electronic Notarizations.

(a) Record retention. (1) A notary public that is registered to perform notarial acts with respect to electronic records or electronic notarizations ~~[notarial acts involving remotely located individuals using communication technology]~~ shall ~~[must]~~ maintain one (1) or more journals in a permanent, tamper-evident electronic format to chronicle those notarizations.

(2) A journal entry shall be made contemporaneously with the performance of the notarial act and shall contain:

(a)(i) The date and time of the notarial act;

(b)(ii) A brief description of the record, if any, and the type of notarial act;

(c)(iii) The full name and address of each individual for whom a notarial act is performed;

(d)(iv) A statement of how identification was established and a description of any identification credential presented including the type of credential and dates of issuance and expiration of the credential;

(e)(v) The fee charged, if any; and

(f)(vi) For a notarial act involving remotely located individuals using communication technology, an audio-visual recording (or a link thereto) of the performance of the notarial act that complies with KRS Chapter 423 and this administrative regulation ~~[chapter]~~.

(3) A journal shall ~~[must]~~ be created and stored in a computer or other electronic storage device or process that protects the electronic journal and any audio-visual recording against unauthorized access by password or cryptographic process. A recording shall ~~[must]~~ be created in an industry-standard audio-visual file format and shall ~~[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.

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

(5) A journal entry shall not record ~~[an]~~ identification numbers assigned to an individual by a governmental agency or any biometric identifier.

(6) A notary public shall ~~[must]~~ take reasonable steps to ensure that a backup of the journal and audio-visual recording exists and is secure from unauthorized use.

(7) On the death or adjudication of incompetency of a current or former notary public who ~~[that]~~ is registered to perform notarial acts with respect to electronic records or notarial acts involving remotely located individuals, the online notary's ~~[notary-public's]~~ personal representative or guardian or any other person knowingly in possession of a journal or audio-visual recording shall ~~[must]~~:

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

(b)(ii) Transmit the journal and recording to one (1) or more repositories under this Section ~~[2 of this administrative regulation]~~; or

(c)(iii) Transmit the journal and recording in an industry-standard readable data storage device to his or her ~~[his/her]~~ notary technology provider.

~~(8)(b)~~ Repositories. A notary public ~~who [that]~~ is registered to perform notarial acts with respect to electronic records or electronic notarizations [notarial acts involving remotely located individuals], a guardian, conservator, or agent of ~~the [such a]~~ notary public, or a personal representative of ~~[such]~~ a deceased online notary public may, by written contract, engage a third person to act as a repository to provide the storage required by this 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:

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

~~(b)(2)~~ Provide that the information shall [will] be transferred to the registered notary public, the guardian, conservator, or agent of the registered notary public, or the personal representative of the deceased registered notary public if the contract is terminated.

~~(9)(a)(e)~~ Lost, Stolen, or Improperly Accessed Journal. ~~(1)~~ A notary public shall [is] be responsible for the security of his or her [the notary public's] journal and shall [may] not allow another individual to use the journal to perform a notarial act. A notary public shall take reasonable steps to maintain the security of the journal and shall not allow access to his or her [the notary public's] journal, except:

~~1.(f)~~ When requested by the Secretary of State or a law enforcement officer;

~~2.(g)~~ When required by court order or subpoena; or

~~3.(h)~~ Pursuant to an agreement to facilitate notarial acts with a vendor or other technology provider identified in accordance with [30 KAR 8:005,] Section 5 of this administrative regulation.

~~(b)(2)~~ A notary public shall promptly notify the Secretary of State of a lost or stolen journal upon discovering the journal is lost or stolen.

~~(10)(d)~~ Disposition of Notarial Records upon Termination of Commission or Registration. Upon the revocation, resignation, termination, or suspension of the commission of a [the] notary public or the revocation, resignation, termination, or suspension of the registration of a [the] notary public to perform notarial acts with respect to electronic records and notarial acts involving remotely located individuals using communication technology, the notary public shall retain the journal in accordance with the provisions of this Section [1 of this administrative regulation].

Section 7. Prior Notice to the Secretary of State and Standards for the Use of Communication Technology in the Performance of Notarial Acts with Respect to Tangible Records. (1) A notary public shall, prior to the initial use of communication technology in the performance of notarial acts with respect to tangible records, notify the Office of the Secretary of State in writing by email or regular U.S. mail. The notice shall identify the communication technology the notary public has selected that is capable of creating an audio-visual recording of the performance of the notarial act. The Office of the Secretary of State shall make an entry of the information provided in the notice.

(2) In using communication technology in the performance of notarial acts with respect to tangible records, a notary public shall have satisfactory evidence of the identity of a remotely located individual if:

(a) The notary public has personal knowledge of the identity of the remotely located individual;[;]

(b) The remotely located individual is identified by oath or affirmation of a credible witness appearing in person or by means of communication technology before the notary public;[;]or

(c) [~~if~~] The notary public is reasonably able to identify the remotely located individual by at least two (2) different types of identity-proofing processes or services as provided in Section 5(4)[~~(d)~~] of this administrative regulation.

(3) A notary public who performs notarial act with respect to tangible records shall create and maintain for a period of not less than ten (10) years, an audio-visual recording of the performance of the notarial act.

(4) A certificate executed by a notary public for the performance of a notarial act using communication technology with respect to tangible records shall contain the statement, "This notarial act involved the use of communication technology." [Notary Discipline.

~~(a) Prohibited Conduct. Failure to comply with a provision of KRS 423.395 may result in the denial, refusal to renew, revocation, suspension or conditioning of a notary commission and may result in disciplinary action.~~

~~(b) Conviction, Finding or Admission. Denial, refusal to renew, revocation, suspension or conditioning of a notary commission shall result upon notification to the Secretary of State of:~~

~~(1) A conviction of felony or crime involving fraud, dishonesty or deceit;~~

~~(2) A finding against, or admission of liability by, the notary public in any legal proceeding or disciplinary action alleging fraud, dishonesty or deceit by the notary; or~~

~~(3) A judicial determination of liability in a suit for fraud, misrepresentation or for failure to discharge the duties of a notary public.~~

~~(c) A notary public shall promptly notify the Secretary of State, in writing, of a conviction, finding, admission of liability, or judicial determination of liability as defined in this section.~~

~~(d) Complaint Against a Notary Public. A person that knows of a violation of Section 1 or 2 may file a complaint against a notary public with the Secretary of State. A complaint shall be in writing, dated, and signed by the person making the complaint. A complaint that does not comply with the requirements of this section will not be filed, responded to or acted upon by the Secretary of State.~~

~~(e) Any condition, restriction, suspension or revocation of a notary commission will automatically have the same effect on the electronic or online registration the notary public holds.]~~

Section 8. Notary Discipline. (1) Failure to comply with the provisions of KRS 423.395 or this administrative regulation may result in the denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission but shall not invalidate a notarial act performed by a notary public.

(2) Denial, refusal to renew, revocation, suspension, or conditioning of a notary commission shall result upon notification to the Secretary of State of:

(a) A conviction of a felony or a crime involving fraud, dishonesty, or deceit;

(b) A finding against, or admission of liability by, the notary public in any legal proceeding or disciplinary action alleging fraud, dishonesty, or deceit by the notary; or

(c) Judicial determination of liability in a suit for fraud, misrepresentation, or failure to discharge the duties of a notary public.

(3) A notary public shall promptly notify the Secretary of State, in writing, of a conviction, finding, admission of liability, or judicial determination of liability as established in this Section.

(4) A person who knows of a violation [of] may file a complaint against a notary public with the Secretary of State.

(5) A complaint shall be in writing, dated, and signed by the person making the complaint. A complaint that does not comply with the requirements of this subsection shall not be filed, responded to, or acted upon by the Secretary of State.

(6) Any condition, restriction, suspension, or revocation of a notary commission shall have the same effect on the electronic or online registration the notary public holds.

(7) The Secretary of State shall cause a review of any complaint filed against a notary public to determine whether the allegations in the complaint would establish a violation by a notary public, and any appropriate disciplinary action, which shall be informed by the following factors:

(a) Nature and severity of the act, violation, or crime committed;

(b) Number and variety of current violations;

(c) Evidence pertaining to the requisite honesty, credibility, truthfulness, and integrity of the notary public;

(d) Actual or potential harm to the general public, group, individual or customer;

(e) History of complaints; and

(f) Prior disciplinary record or warning;

(8) The Secretary of State shall inform the notary public of any disciplinary action by mailing a notice of disciplinary action to the home address of the notary public on file. The notice shall inform the notary public of the basis for the disciplinary action and the right to a hearing. Administrative proceedings under this Section shall be governed by the provisions of KRS Chapter 13B.

(9) The Secretary of State shall certify any disciplinary action to the clerk of the county in which the notary public received his or her commission.

CONTACT PERSON: Michael Wilson, Director of Business and Deputy General Counsel, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7422, fax (502) 564-5687; email sos.secretary@ky.gov.