

5 GCA GOVERNMENT OPERATIONS
CH. 33 NOTARIES PUBLIC

ARTICLE 10
REMOTE ONLINE NOTARIZATION

SOURCE: Entire Article added by P.L. 35-100:1 (Oct. 29, 2020).

2020 NOTE: Pursuant to P.L. 35-0100:5 (Oct. 29, 2020), effective upon enactment, the Office of the Attorney General has 45 days from enactment to implement administrative requirements.

- § 33801. Definitions.
- § 33802. Standards for Remote Online Notarization.
- § 33803. Registration Required.
- § 33804. Authority to Perform Remote Online Notarizations.
- § 33805. Electronic Record of Remote Online Notarizations.
- § 33806. Use of Electronic Journal, Signature, And Seal.
- § 33807. Remote Online Notarization Procedures.
- § 33808. Fees for Remote Online Notarization.
- § 33809. Termination of Remote Online Notary Public's Commission.
- § 33810. Wrongful Possession of Software or Hardware; Criminal Offense.
- § 33811. Conflict.

§ 33801. Definitions.

As used in this Article:

(a) *Appear, or personally appear, or in the presence of* means:

(1) being in the same physical location as another person and close enough to see, hear, communicate with, and exchange tangible identification credentials with that individual; or

(2) interacting with another individual by means of communication technology that complies with the provisions of this Chapter.

(b) *Communication technology* means an electronic device or process that allows a notary public physically

5 GCA GOVERNMENT OPERATIONS
CH. 33 NOTARIES PUBLIC

located in Guam and a remotely located individual to communicate with each other simultaneously by sight and sound, and which, as necessary, makes reasonable accommodations for individuals with vision, hearing, or speech impairments.

(c) *Credential analysis* means a process or service that meets the standards established by the Attorney General of Guam through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.

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

(e) *Electronic record* means information that is created, generated, sent, communicated, received, or stored by electronic means.

(f) *Electronic seal* means information within a notarized electronic record that confirms the remote online notary public's name, jurisdiction, identifying number and commission expiration date, and generally corresponds to information in notary seals used on paper documents.

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

(h) *Identity proofing* means a process or service operating according to standards established by the Attorney General of Guam through which a third person affirms the identity of an individual:

(1) by means of dynamic knowledge-based authentication such as a review of personal information from public or proprietary data sources; or

(2) by means of analysis of biometric data such as, but not limited to, facial recognition, voiceprint analysis, or fingerprint analysis.

5 GCA GOVERNMENT OPERATIONS
CH. 33 NOTARIES PUBLIC

(i) *Notarial act* means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under Guam law. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, and certifying or attesting a copy.

(j) *Outside the United States* means outside the geographic boundaries of Guam, a state of the United States, the District of Columbia, or any other territory, commonwealth, or insular possession subject to the jurisdiction of the United States.

(k) *Principal* means an individual:

(1) whose electronic signature is notarized in a remote online notarization; or

(2) making an oath or affirmation or an acknowledgement other than in the capacity of a witness for the remote online notarization.

(l) *Remote online notarial certificate* is the form of an acknowledgement, jurat, verification on oath or affirmation, or verification of witness or attestation that is completed by a remote online notary public and:

(1) contains the online notary public's electronic signature, electronic seal, title, and commission expiration date;

(2) contains other required information concerning the date and place of the remote online notarization;

(3) otherwise conforms to the requirements for an acknowledgement, jurat, verification on oath or affirmation, or verification of witness or attestation under Guam law; and

(4) indicates that the person making the acknowledgement, oath or affirmation appeared remotely online.

**5 GCA GOVERNMENT OPERATIONS
CH. 33 NOTARIES PUBLIC**

(m) *Remote online notarization or remote online notarial act* means a notarial act performed by means of communication technology that meets the standards adopted under this Article.

(n) *Remote online notary public* means a notary public who has been authorized by the Attorney General of Guam to perform remote online notarizations under this Article.

(o) *Remote presentation* means transmission to the remote online notary public through communication technology of an image of a government-issued identification credential that is of sufficient quality to enable the remote online notary public to:

- (1) identify the individual seeking the remote online notary public's services; and
- (2) perform credential analysis.

(p) *Remotely located individual* means an individual who is not in the physical presence of the notary.

§ 33802. Standards for Remote Online Notarization.

The Attorney General of Guam shall maintain standards for remote online notarization in accordance with the Rules for Remote Online Notarization, pursuant to Article 3 of Chapter 1, Title 19, Guam Administrative Rules and Regulations.

§ 33803. Registration Required.

(a) A notary public commissioned in Guam may become a remote online notary public in accordance with this Section. Before a notary performs a remote online notarization, he or she must apply with the Office of the Attorney General of Guam in accordance with the Rules for Remote Online Notarization and identify the technology that the electronic notary public intends to use, which must conform to the Rules for Remote Online Notarization.

(b) Before each registration to perform electronic notarial acts, an individual shall complete a course of instruction as approved by the Attorney General of Guam and pass an examination based on the course. The content of the course shall

5 GCA GOVERNMENT OPERATIONS
CH. 33 NOTARIES PUBLIC

include notarial rules, procedures, and ethical obligations pertaining to electronic notarization in this Chapter. The course may be taken in conjunction with any course required by the Attorney General of Guam.

(c) Unless terminated pursuant to this Chapter, the term of registration to perform electronic notarial acts shall begin on the registration starting date set by the Attorney General of Guam and shall continue as long as the notary public's current commission remains valid.

(d) An individual registering to perform electronic notarial acts shall submit to the Attorney General of Guam an application in a format prescribed by the Attorney General which includes:

(1) proof of successful completion of the course and examination required under Subsection (b) of this Section;

(2) disclosure of any and all license or commission revocations or other disciplinary actions against the registrant;

(3) any other information, evidence, or declaration required by the Attorney General of Guam; and

(4) evidence that the surety bond prescribed by this Chapter for performance of electronic notarial acts by communication technology has been issued.

(e) Upon the applicant's fulfillment of the requirements for registration under this Article, the Attorney General of Guam shall approve the registration and issue to the applicant a unique registration number.

(f) The Attorney General of Guam may reject a registration application if the applicant fails to comply with any section of this Article.

§ 33804. Authority to Perform Remote Online Notarizations.

A remote online notary public physically located in Guam may perform a remote online notarial act using communication technology in accordance with this Article and the Rules for Remote Online Notarization for a remotely located individual who is physically located:

**5 GCA GOVERNMENT OPERATIONS
CH. 33 NOTARIES PUBLIC**

- (a) in Guam;
- (b) outside Guam but within the United States; or
- (c) outside the United States if:

- (1) the remote online notary public has no actual knowledge that the act of making the statement or signing the record is prohibited in the jurisdiction in which the person is located; and

- (2) the person placing his or her electronic signature on the electronic record confirms to the remote online notary public that the requested remote online notarial act and the electronic record:

- (A) are part of or pertain to a matter that is to be filed with or is currently before a court, governmental entity, or other entity in the United States;

- (B) relates to property located in the United States; or

- (C) relates to a transaction substantially connected to the United States.

§ 33805. Electronic Record of Remote Online Notarizations.

(a) A remote online notary public shall keep a secure electronic journal of each remote online notarial act performed by the remote online notary public. The electronic journal must contain for each remote online notarization:

- (1) the date and time of the notarization;
- (2) the type of notarial act;
- (3) the type, the title, or a description of the electronic record or proceeding;
- (4) the printed name and address of each principal involved in the transaction or proceeding;
- (5) evidence of identity of each principal involved in the transaction or proceeding in the form of:

**5 GCA GOVERNMENT OPERATIONS
CH. 33 NOTARIES PUBLIC**

(A) a statement that the person is personally known to the remote online notary public;

(B) a notation of the type of identification document provided to the remote online notary public;

(C) a record of the identity verification made under this Article, if applicable, or

(D) the following:

(i) the printed name and address of each credible witness swearing to or affirming the person's identity; and

(ii) for each credible witness not personally known to the remote online notary public, a description of the type of identification documents provided to the remote online notary public; and

(6) the fee, if any, charged for the notarization.

(b) The remote online notary public shall create an audio and video copy of the performance of the notarial act.

(c) The remote online notary public shall take reasonable steps to:

(1) ensure the integrity, security, and authenticity of remote online notarizations;

(2) maintain a backup for the electronic journal required by Subsection (a) and the recording required by Subsection (b); and

(3) protect the backup record from unauthorized use.

(d) The electronic journal required by Subsection (a) and the recording required by Subsection (b) shall be maintained for at least ten (10) years after the date of the transaction or proceeding.

(1) The remote online notary public may designate as custodian of the recording and the electronic journal:

(A) the employer of the remote online notary public if evidenced by a record signed by the remote

**5 GCA GOVERNMENT OPERATIONS
CH. 33 NOTARIES PUBLIC**

online notary public and the employer; or

(B) a repository meeting the standards established by the Attorney General of Guam.

(2) The Attorney General of Guam shall establish:

(A) standards for the retention of a video and audio copy of the performance of the notarial act;

(B) procedures for preservation of the audio and video copy and the electronic journal if the remote online notary public dies or is adjudicated incompetent, or if the remote online notary public's commission or authority to perform notarial acts is otherwise terminated; and

(C) standards for third party repositories for the retention of the audio and video copy of the performance of the notarial act.

§ 33806. Use of Electronic Journal, Signature, and Seal.

(a) A remote online notary public shall keep the remote online notary public's electronic journal, electronic signature, and electronic seal secure. The remote online notary public may not allow another person to use the remote online notary public's electronic signature or electronic seal.

(b) A remote online notary public shall attach the remote online notary public's electronic signature and seal to the remote online notarial certificate of an electronic record in a manner that renders any subsequent change or modification to the electronic record to be evident.

(c) A remote online notary public shall immediately notify law enforcement and the Attorney General of Guam of the theft or vandalism of the remote online notary public's electronic journal, electronic signature, or electronic seal. A remote online notary public shall immediately notify the Attorney General of Guam of the loss or use by another person of the remote online notary public's electronic journal, electronic signature, or electronic seal.

5 GCA GOVERNMENT OPERATIONS
CH. 33 NOTARIES PUBLIC

§ 33807. Remote Online Notarization Procedures.

(a) A remote online notary public may perform a remote online notarization authorized under this Article that meets the requirements of this Article and the Rules for Remote Online Notarization regardless of whether the principal is physically located in Guam at the time of the remote online notarization.

(b) In performing a remote online notarization, a remote online notary public shall verify the identity of a person creating an electronic signature at the time that the signature is taken by using communication technology that meets the requirements of this Article and the Rules for Remote Online Notarization. Identity may be verified by:

(1) the remote online notary public's personal knowledge of the person creating the electronic signature; or

(2) each of the following:

(A) remote presentation by the person creating the electronic signature of a government-issued identification credential, including a passport or driver's license, that contains the signature and a photograph of the person:

(B) credential analysis; and

(C) identity proofing.

(c) The remote online notary public shall take reasonable steps to ensure that the communication technology used in a remote online notarization is secure from unauthorized interception.

(d) The remote online notarial certificate for a remote online notarization must state that the person making the acknowledgement or making the oath appeared remotely online.

(e) A remote online notarial act meeting the requirements of this Article satisfies the requirement of Guam law relating to a notarial act that requires a principal to appear or personally appear before a notary or that the notarial act be performed in the presence of a notary.

5 GCA GOVERNMENT OPERATIONS
CH. 33 NOTARIES PUBLIC

§ 33808. Fees for Remote Online Notarization.

A remote online notary public or the remote online notary public's employer may charge a fee for performance of remote online notarization.

§ 33809. Termination of Remote Online Notary Public's Commission.

(a) Except as provided in Subsection (b) of this Section, a remote online notary public whose commission terminates shall destroy the coding, disk, certificate, card, software, or password that enables electronic affixation of the remote online notary public's official electronic signature or seal. The remote online notary public shall certify compliance with this Subsection to the Attorney General of Guam.

(b) A former remote online notary public whose commission terminated for a reason other than revocation or a denial of renewal is not required to destroy the items described in Subsection (a) of this Section if the former remote online notary public is recommissioned as a remote online notary public with the same electronic signature and seal within three (3) months after the former remote online notary public's former commission terminated.

§ 33810. Wrongful Possession of Software or Hardware; Criminal Offense.

(a) A person who, without authorization, knowingly obtains, conceals, damages, or destroys the certificate, disk, coding, card, program, software or hardware enabling a remote online notary public to affix an official electronic signature or seal commits a criminal offense.

(b) An offense under this Section is a third degree felony.

§ 33811. Conflict.

In the event of a conflict between the provisions of this Article and any other laws of Guam, the provisions of this Article shall control.

5 GCA GOVERNMENT OPERATIONS
CH. 33 NOTARIES PUBLIC

ARTICLE 11
ELECTRONIC RECORDING AUTHORIZATION

SOURCE: Added by P.L. 35-100:2 (Oct. 29, 2020).

§ 33901. Recording of an Electronic Record.

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(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by paper copy of an electronic record that complies with the requirements of this Chapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature if the notary has attached an electronic notarial certificate that meets the requirements of this Chapter.
