Guam Legislature Clerks <clerks@guamlegislature.org>

Messages and Communications

1 message

Speaker's Office <speaker@guamlegislature.org> Sat, Oct 31, 2020 at 2:40 PM
To: Clerks Office <clerks@guamlegislature.org>
Cc: Rennae Meno <rennae@guamlegislature.org>

10/30/20	6:41 PM	10/29/20	Bill No. 369-35 (COR), signed into law as Public Law No. 35-100.	Office of the Governor of Guam	35GL-20-2387
10/30/20	6:41 PM	10/29/20	Bill No. 378-35 (LS), signed into law as Public Law No. 35-101.	Office of the Governor of Guam	35GL-20-2388
10/30/20	6:41 PM	10/29/20	Bill No. 2-35 (LS), signed into law as Public Law No. 35-102.	Office of the Governor of Guam	35GL-20-2389
10/30/20	6:41 PM	10/30/20	Bill No. 287-35 (COR), signed into law as Public Law No. 35-103.	Office of the Governor of Guam	35GL-20-2390
10/30/20	6:41 PM	10/29/20	Bill No. 165-35 (COR), signed into law as Public Law No. 35-104.	Office of the Governor of Guam	35GL-20-2391
10/30/20	6:41 PM	10/30/20	Substitute Bill No. 360-35 (COR), signed into law as Public Law No. 35-105.	Office of the Governor of Guam	35GL-20-2392

Sinseru yan Minagåhet,

Office of the Speaker • Tina Rose Muña Barnes
Committee on Public Accountability, Human Resources & the Guam Buildup

35th Guam Legislature
I Mina'trentai Singko na Liheslaturan Guåhan

Guam Congress Building | 163 Chalan Santo Papa | Hagatna, GU 96910
T: (671) 477-2520/1
speaker@guamlegislature.org

This e-mail message is intended only for the use of the individual or entity named above and may contain confidential and privileged information. If you are not the intended recipient, any disclosure, copying, distribution or use of the information contained in this transmission is strictly PROHIBITED. If you have received this transmission in error, please immediately notify us by replying to speaker@guamlegislature.org and delete the message immediately. Thank you very much.

Gumai pribilehu yan konfedensia este siha na mensåhi. Solo espesiåtmente para hågu ma entensioña pat ma aturisa para unrisibi. Sen prubidu kumu ti un ma aturisa para manribisa, na'setbe, pat mandespåtcha. Yanggen lachi rinisibu-mu nu este na mensåhi , put fabot ago' guatu gi I numa'huyong gi as speaker@guamlegislature.org yan despues destrosa todu siha I kopian mensåhi. Si Yu'os ma'åse'.

6 attachments

- **Bill No. 369-35 (COR), signed into law as Public Law No. 35-100.pdf** 6435K
- **Bill No. 378-35 (LS), signed into law as Public Law No. 35-101.pdf** 698K
- **Bill No. 2-35 (LS), signed into law as Public Law No. 35-102.pdf** 946K
- **Bill No. 287-35 (COR), signed into law as Public Law No. 35-103.pdf** 2213K
- **Bill No. 165-35 (COR), signed into law as Public Law No. 35-104..pdf** 1044K
- **Substitute Bill No. 360-35 (COR), signed into law as Public Law No. 35-105..pdf** 4718K

October 29, 2020

35GL-20-2387
Speaker Tina Rose Muña Barnes

OCT 30 2020
Time 6:41 ( )AM (✓)PM
Received By: [signature]

HONORABLE TINA ROSE MUÑA BARNES
Speaker
I Mina'trentai Singko Na Liheslaturan Guåhan
35th Guam Legislature
Guam Congress Building
163 Chalan Santo Papa
Hagåtña, Guam 96910

Re: **Bill No. 369-35 (COR) - An Act to Add New Articles 10 and 11 to Chapter 33 of Title 5, Guam Code Annotated, Relative to Authorizing the Performance of Notarial Acts by a Remote Online Notary Public, and Authorizing the Recording of an Electronic Record; to Amend § 33512 of Part 2, Article 6, Chapter 33 of Title 5, Guam Code Annotated, Relative to Criminal Prosecution of a Notary Office; and to Add a New Article 3 to Chapter 1 of Title 19, Guam Administrative Rules and Regulations, Relative to Implementing the Rules for Remote Online Notarization**

Dear Madame Speaker:

On July 20, 2020, in recognition of the need to facilitate economic activity while mitigating against the potential spread of COVID-19, I issued Executive Order No. 2020-25 which suspended provisions of Guam law that mandated notarial acts occur in the physical presence of a notary public. Additionally, Executive Order No. 2020-25 suspended the application of the Administrative Adjudication Law for the limited purpose of providing for the expedient adoption of the implementation of Rules for Remote Online Notarization.

While the provisions of Executive Order No. 2020-25 are intended to be temporary in nature to address our current circumstances, it has become apparent that our laws must be modernized to accommodate the nature of business and economic activities today. Bill No. 369-35, which I have signed into law as ***Public Law No. 35-100***, is an important step toward ensuring that we have all the necessary tools to reenergize our economy once we have overcome the COVID-19 public health emergency.

Senseramente,

Lou Leon Guerrero

LOURDES A. LEON GUERRERO
I Maga'hågan Guåhan
Governor of Guam

Enclosure: Bill No. 369-35 (COR) *nka P.L. 35-100*
cc via email: *Sigundo Maga'låhen Guåhan*
Compiler of Laws

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Bill No. 369-35 (COR), "AN ACT TO *ADD* NEW ARTICLES 10 AND 11 TO CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE PERFORMANCE OF NOTARIAL ACTS BY A REMOTE ONLINE NOTARY PUBLIC, AND AUTHORIZING THE RECORDING OF AN ELECTRONIC RECORD; TO *AMEND* § 33512 OF PART 2, ARTICLE 6, CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO CRIMINAL PROSECUTION OF A NOTARY OFFICE; AND TO *ADD* A NEW ARTICLE 3 TO CHAPTER 1 OF TITLE 19, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO IMPLEMENTING THE RULES FOR REMOTE ONLINE NOTARIZATION,"** was on the 19th day of October 2020, duly and regularly passed.

Tina Rose Muña Barnes
Speaker

Attested:

Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 19th day of October, 2020, at 5:41 o'clock P.M.

Assistant Staff Officer
Maga'håga's Office

APPROVED:

Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 10/29/2020

Public Law No. 35-100

Jessica Cruz
RCVD BY CENTRAL FILE
OCT 29 20 PM 2:41
2020-11980

I MINA'TRENTAI SINGKO NA LIHESLATURAN GUÅHAN
2020 (SECOND) Regular Session

Bill No. 369-35 (COR)
As amended by the Committee on General Government Operations, Appropriations, and Housing;
and further amended on the Floor.

Introduced by:

Mary Camacho Torres
Tina Rose Muña Barnes
William M. Castro
Régine Biscoe Lee
Kelly Marsh (Taitano), PhD
James C. Moylan
Louise B. Muña
Telena Cruz Nelson
Sabina Flores Perez
Clynton E. Ridgell
Joe S. San Agustin
Amanda L. Shelton
Telo T. Taitague
Jose "Pedo" Terlaje
Therese M. Terlaje

AN ACT TO *ADD* NEW ARTICLES 10 AND 11 TO CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE PERFORMANCE OF NOTARIAL ACTS BY A REMOTE ONLINE NOTARY PUBLIC, AND AUTHORIZING THE RECORDING OF AN ELECTRONIC RECORD; TO *AMEND* § 33512 OF PART 2, ARTICLE 6, CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO CRIMINAL PROSECUTION OF A NOTARY OFFICE; AND TO *ADD* A NEW ARTICLE 3 TO CHAPTER 1 OF TITLE 19, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO IMPLEMENTING THE RULES FOR REMOTE ONLINE NOTARIZATION.

BE IT ENACTED BY THE PEOPLE OF GUAM:

Section 1. A new Article 10 is hereby *added* to Chapter 33 of Title 5, Guam Code Annotated, to read:

"ARTICLE 10

REMOTE ONLINE NOTARIZATION

§ 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 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.

(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.

(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 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:

(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:

(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 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.

§ 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.

§ 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."

Section 2. A new Article 11 is hereby *added* to Chapter 33 of Title 5, Guam Code Annotated to read:

"ARTICLE 11

ELECTRONIC RECORDING AUTHORIZATION

§ 33901. Recording of an Electronic Record.

(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."

Section 3. § 33512 of Part 2, Article 6, Chapter 33, Title 5, Guam Code Annotated, is hereby *amended* to read:

"**§ 33512. Criminal Prosecution.**

A notary who knowingly and repeatedly performs or fails to perform any act prohibited or mandated respectively by this Chapter is guilty of a third degree felony. Except as authorized under Article 10 of this Chapter, a notary who knowingly performs a notarization for a person who does not appear before the notary or at the notary's office is guilty of a third degree felony."

Section 4. Rules and Regulations Adopted. The rules and regulations, entitled "RULES FOR REMOTE ONLINE NOTARIZATION," and attached hereto as "EXHIBIT A," are hereby adopted by *I Liheslaturan Guåhan*, and the Guam Compiler of Laws shall codify the same as Article 3 of Chapter 1 of Title 19, Guam Administrative Rules and Regulations.

Section 5. Effective Date. This Act shall be effective upon enactment. The Office of the Attorney General of Guam shall have forty-five (45) days from the date of enactment to implement the administrative requirements it deems necessary for the establishment of the Remote Online Notary Program.

Section 6. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall

not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

EXHIBIT A

"ARTICLE 3
RULES FOR REMOTE ONLINE NOTARIZATION

§ 3101. Online Notarization.
§ 3102. Application for Online Notary Public Commission; Renewal.
§ 3103. Performance of Notarial Acts.
§ 3104. Electronic Signature and Seal.
§ 3105. Standards for Online Notarization.
§ 3106. Fees.
§ 3107. Changes After Commissioning.
§ 3108. Termination of Commission.

§ 3101. Online Notarization.

(a) A notary public who has been properly commissioned to conduct online notarizations may complete authorized notarial acts by means of an electronic interactive two-way audio and video communication that meets the following requirements. An online notarization may not be performed by an individual who has not been commissioned as an online notary public by the Office of the Attorney General of Guam.

(b) The terms used herein shall have the same definitions prescribed in § 33801 of Article 10, Chapter 33, Title 5, Guam Code Annotated. These Rules pertain to online notarizations as defined and used throughout Article 10 of Chapter 33, Title 5, Guam Code Annotated.

§ 3102. Application for Online Notary Public Commission; Renewal.

(a) A person who has been previously commissioned as a notary public by the Attorney General of Guam, or meets the qualification requirements for commissioning as a notary public as outlined in Chapter 33 of Title 5, Guam Code Annotated, may submit an application for commissioning as an online notary public

by submitting to the Office of the Attorney General of Guam the prescribed application form including the following information:

(1) the applicant's legal name;

(2) the applicant's physical address in Guam, which includes the street address, village, and zip code. The applicant may provide a post office box number for purposes of receiving mail from the Attorney General, but must also provide a physical address;

(3) a valid email address of the applicant;

(4) a valid telephone number of the applicant;

(5) the date the applicant was commissioned as a notary public;

(6) the date the applicant's commission is set to expire;

(7) the name of the vendor and electronic technology, or technologies, to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document;

(8) the name of the vendor and electronic technology, or technologies, to be used in conducting identity proofing and credential analysis;

(9) a copy of the applicant's electronic notarial certificate (otherwise known as a digital certificate) or other technology for rendering a notarized electronic document tamper evident;

(10) a copy of the applicant's electronic seal in a file format acceptable to the Office of the Attorney General of Guam;

(11) a copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated;

(12) a copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public to conduct identity proofing and credential analysis;

(13) an explanation of the methods and/or technology by which the online notary public will maintain and store the secure electronic records of all electronic documents notarized by the online notary public in accordance with § 3103(h) of these Rules;

(14) a certification confirming that the applicant will comply with the following standards prescribed by the Attorney General of Guam; and

(15) an application fee of One Hundred Dollars ($100.00). All fees shall be deposited in the Notary Public Revolving Fund and used according to § 33106 of Article 1, Chapter 33, Title 5, Guam Code Annotated.

(b) The Attorney General shall issue an online notary public commission to a qualified applicant who meets the eligibility requirements stated in these Rules, has submitted a properly completed and executed application, and has submitted the required application fee.

(c) An online notary public may renew his or her online notary public commission by filing an application for renewal in the same manner and on the same form as if filing an initial application for commission. The renewal must be received by the Attorney General no later than the expiration date of the online notary public's current commission. The Attorney General shall determine eligibility for renewals according to the same standards as initial applications and shall not be bound by prior determinations of eligibility. Online notary public commissions will terminate on the same date on which the notary public commission terminates regardless of when the online notary public commission was granted.

§ 3103. Performance of Notarial Acts.

(a) An online notary public may perform authorized online notarial acts relating to electronic documents only if the principal personally appears before the online notary public at the time of the notarization; however, such personal appearance may be by means of an electronic two-way audio and video communication.

(b) An online notary public may perform authorized notarial acts by means of an electronic interactive two-way audio and video communication only when the online notary public is physically located within Guam, without regard to whether the principal is physically located in Guam at the time of the online notarization.

(c) An online notary public shall require the principal to demonstrate, to the satisfaction of the online notary public, that such person is not under duress and is not otherwise being coerced to complete the transaction, in order to preserve the integrity, security, and authenticity of online notarizations. An online notary public is authorized to refuse to perform a notarial act when the online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence.

(d) An online notary public must verify the identity of a principal at the time that the signature is taken by means of two-way video and audio conference technology. Identity may be verified by the online notary public's personal knowledge of the principal, or by:

(1) remote presentation by the principal of a non-military, government-issued credential, which is an identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been stamped by the United States immigration and naturalization service, and which is unexpired, contains the signature and a photograph of the principal, and which is capable of credential analysis in accordance with § 3105 of these Rules;

(2) credential analysis of the credential provided by the principal as set forth in § 3105; and

(3) identity proofing of the principal as set forth in § 3105.

(e) Under no circumstance shall an online notary public base identification merely on familiarity with a principal's electronic signature or an electronic verification process that authenticates the principal's electronic signature when the principal does not personally appear before the online notary public.

(f) The online notary public shall refuse to complete the performance of a notarial act where:

(1) the online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence;

(2) the online notary public is unable to verify the identity of the principal using the means and the standards identified in these Rules;

(3) the online notary public becomes aware that the security of the two-way audio-visual transmission is not secure;

(4) the signature of the principal cannot be attached to the electronic document; or

(5) the online notary public's electronic notarial certificate and seal cannot be attached to the electronic document using an electronic technology which renders any subsequent change or modification to the document evident.

(g) The online notary public shall complete and attach an electronic notarial certificate to all written notarial acts that identifies the principal, the date of notarization, the address in which the notarization was performed, that the notarial act was an online notarization, and the type of notarial act performed. The electronic notarial certificate shall be signed by affixing or logically associating the online notary public's electronic notarial certificate, electronic signature, and electronic

seal in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(h) An online notary public performing authorized notarial acts must also satisfy the following requirements. An online notary public, or his or her properly designated custodian or repository, must keep, for at least ten (10) years after the date of the transaction or proceeding, a secure electronic record of all electronic documents notarized by the online notary public, containing all of the following information:

(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 document or proceeding;

(4) the printed name and address of each principal involved in the transaction or proceeding;

(5) evidence of the identity of each principal involved in the transaction or proceeding in the form of:

(A) a statement that the principal(s) is personally known to the online notary public; or both

(B) a notation of the type of identification document provided to the online notary public for each principal; and

(C) a notation that the principal(s) completed identity proofing and credential analysis procedures described in § 3105 of these Rules and both were satisfactory to verify the identity of the principal(s);

(6) a recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and

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

(i) The online notary public must take reasonable steps to ensure that the two-way video and audio communication used is encrypted during transmission, through means such as a virtual private network (VPN), and secure from unauthorized interception.

(j) The online notary public shall not disclose any access information used to affix the online notary public's electronic notarial certificate, signature, and seal, except when requested by the Attorney General, law enforcement, the court, or pursuant to an agreement between the online notary public and an electronic documentation preparation and transmission vendor, which agreement shall have in place reasonable precautions to prevent the unauthorized release of access information.

(k) The online notary public should ensure that all records relating to any individual transaction are securely stored using the Advanced Encryption Standard (AES) as a minimum encryption standard and that the principal's personally identifying information or any government-issued identification numbers cannot be accessed by unauthorized individuals. The online notary public should refrain from recording, or take steps to obscure from the recording, any identification number that was assigned to the principal by a governmental agency or by the United States and any other number(s) that could be used to identify the principal.

(l) Records of an online notarization shall be retained, in a safe and secure manner, for ten (10) years following the date of the notarization. An online notary public must also maintain a backup of the electronic records for the same period of time. Both the original records and the backup shall be protected from unauthorized use. An online notary public may elect to store such recordings with a custodian or repository and such recordings may be stored separately from the journal as long as the corresponding journal entry cross-references the place of storage and describes the manner in which the record is stored.

(m) An online notary public may use his or her electronic signature only for preforming online notarizations. The online notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record by also affixing his or her signature and seal to the copy of the electronic record in the traditional manner or other manner authorized by law.

§ 3104. Electronic Signature and Seal.

(a) An online notary public must use the same electronic signature for all online notarial acts performed by the online notary public.

(b) An online notary public must use the same electronic seal for all online notarial acts performed by the online notary public, and a copy of such seal must be provided to the Office of the Attorney General at the time of the online notary public's application for certification as an online notary public. The name on the online notary public seal must match the name, as stated on the application, under which the online notary public is commissioned and performs all notarial acts.

(c) An online notary public shall use an electronic seal that conforms to the following design: a rectangular seal with the notary public's name as it appears on the commission printed at the top, the address of the notary's business or residence printed at the bottom, the words "Notary Public, in and for the Territory of Guam, U.S.A." printed in the center, and the words "Online Notary Public" printed below. The electronic seal must also be accompanied by a statement of the date upon which the online notary public's commission expires.

(d) An online notary public must attach or logically associate his or her electronic signature and seal to the electronic notarial certificate in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

(e) The online notary public must use technology from a third-party provider who has provided the online notary public with evidence of its ability to

provide an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant.

(f) The electronic notarial certificate for an online notarization must contain a notation that the notarization is an online notarization, which may be satisfied by affixing the online notary public's seal to the electronic notarial certificate. The acknowledgment contained within the electronic notarial certificate must also contain a statement that the principal "personally appeared before me by audio-video communication" or "personally appeared by audio-video communication" or "before me appeared by audio-video communication."

(g) The online notary public's electronic notarial certificate, electronic signature, and electronic seal must remain within the exclusive control of the online notary public (including control by means of use of a password) at all times and shall be used only for the purpose of performing online notarial acts.

(h) The online notary public must provide any necessary instruction or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated. If at any time the online notary public adopts a new or additional technology or vendor with which to perform online notarial acts, the online notary public must notify the Office of the Attorney General of the new or additional technology, signature and/or seal, as well as any additional information that may be requested by the Office of the Attorney General.

§ 3105. Standards for Online Notarization.

(a) Identity proofing and credential analysis must be performed by a third party who has provided evidence to the online notary public of the ability to satisfy the requirements of this Article.

(b) Requirements for Credential Analysis. A credential is a non-military identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been

stamped by the United States immigration and naturalization service. In order to be valid, the credential must also be unexpired and contain the photograph and signature of the principal. Credential analysis is the process by which the validity of a non-military government-issued identification credential is verified. Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal. Credential analysis shall, at a minimum:

(1) use automated processes to aid the online notary public in verifying the identity of a principal;

(2) ensure that the credential passes an authenticity test, consistent with sound commercial practices that:

(A) use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features;

(B) use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;

(C) use reasonable efforts to utilize information held or published by the issuing source or authoritative source(s), as made generally available for commercial purposes, to confirm the validity of personal details and credential details; and

(D) provide output of the authenticity test to the online notary public; and

(3) enable the online notary public to visually compare the following for consistency: the information and photo presented on the credential itself and the principal as viewed by the online notary public in real time through audio-visual transmission.

(c) Requirements for Identity Proofing. Identity proofing is the process by which the identity of an individual is affirmed by a third party through review of

public and proprietary data sources. Identity proofing is performed through dynamic Knowledge Based Authentication (KBA) which meets the following requirements:

(1) the principal must answer a quiz consisting of a minimum of five (5) questions related to the principal's personal history or identity, formulated from public and proprietary data sources;

(2) each question must have a minimum of five (5) possible answer choices;

(3) at least eighty percent (80%) of questions must be answered correctly;

(4) all questions must be answered within two (2) minutes;

(5) if the principal fails in his or her first attempt, the principal may retake the quiz one (1) time within twenty-four (24) hours;

(6) During the second attempt, a minimum of sixty percent (60%) of the prior questions must be replaced; and

(7) if the principal fails in his or her second attempt, the principal is not permitted to retry with the same online notary public for a period of twenty-four (24) hours.

(d) If the principal must exit the workflow, the principal must meet the criteria outlined in this Section and must restart the identity proofing and credential analysis from the beginning.

(e) An online notarization system used to perform online notarial acts by means of two-way audio-video communication shall:

(1) provide for continuous, synchronous audio-visual feeds;

(2) provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak with each other simultaneously through live, real-time transmission;

(3) provide sufficient captured image resolution for credential analysis to be performed in accordance with these Rules;

(4) include a means of authentication that reasonably ensures only authorized parties have access to the audio-video communication;

(5) provide some manner of ensuring that the electronic record presented for online notarization is the same record electronically signed by the principal;

(6) be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz and the means and methods used to generate the credential analysis output; and

(7) provide reasonable security measures to prevent unauthorized access to:

(A) the live transmission of the audio-video communication;

(B) a recording of the audio-video communication;

(C) the verification methods and credentials used to verify the identity of the principal; and

(D) the electronic documents presented for online notarization.

§ 3106. Fees.

An online notary public, or the online notary public's employer, may charge a fee that does not exceed Twenty-five Dollars ($25.00) for performing each online notarization.

§ 3107. Changes after Commissioning.

(a) An online notary public who changes his or her address, such that the online notary public no longer qualifies for either a traditional notary public

§ 3108. Termination of Commission.

If the Attorney General of Guam determines that any online notary public has not complied with these regulations or the provisions of Chapter 33 of Title 5, Guam Code Annotated, related to online notarization, the Attorney General shall terminate the commission of the online notary public."