

**POWERS OF ATTORNEY AND LIVING  
WILLS REVISITED: ESTATE  
PLANNING FOR INCAPACITATED  
INDIVIDUALS AND LESSONS FROM  
THE PANDEMIC**

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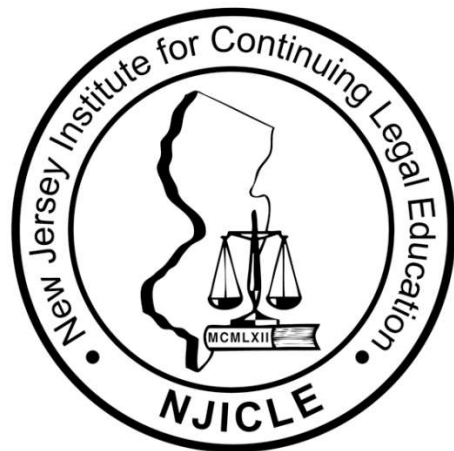
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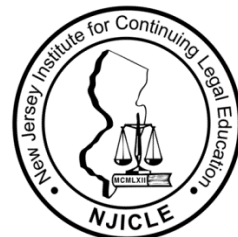
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THE PANDEMIC**

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M1070.21



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# **Powers of Attorney and Living Wills: Revisited**

*Estate Planning for Incapacitated Individuals and  
Lessons from the Pandemic*

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Disclaimer: This material is intended for educational purposes only and shall not be construed as legal advice. The material contained in this manual is intended to provide general information regarding the laws of the State of New Jersey and the Internal Revenue Code as they apply to estate planning. This manual is not a substitute for independent research and analysis by the practitioner. This manual is not intended to be a treatise on New Jersey estate planning laws.

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## **INTRODUCTION**

Clients often overlook the importance of planning for incapacity as part of their basic estate planning. The attorney should discuss the need for this type of planning with the client and should work with the client to determine the person or persons who will serve as the client's agent in the event of incapacity. Incapacity can happen at any age, so planning for incapacity is fundamental for all clients, not just the elderly or infirm.

It is much easier to plan for incapacity in advance while the client is healthy and of sound mind. If the client is already incapacitated and has not appointed an agent, a guardianship or conservatorship proceeding must be instituted in order to have the court appoint individuals or entities to make financial, legal, medical and residential decisions for the incapacitated person. These proceedings can be very costly. More importantly, they may result in the appointment of individuals or entities that the incapacitated person may not have chosen.

There are two major areas of a client's life that we try to address as part of incapacity planning. The first is with respect to managing the client's financial and property matters. The second is with respect to the client's medical matters. While there are many routes that may be taken to deal with incapacity, the attorney can assist by counseling with respect to and preparing a power of attorney and an advance directive for health care (a proxy directive and living will). A revocable trust may also be used as a way to plan for future incapacity.

### **I. POWERS OF ATTORNEY**

A power of attorney is a document in which an individual (known as the principal) appoints an "attorney-in-fact" to act on behalf of the principal with respect to his or her financial and property matters. The power of attorney is formal evidence of the relationship between the principal and the attorney-in-fact and is relied upon by third parties in conducting business with the attorney-in-fact.

The power of attorney may be limited in scope to deal with specific decisions (a "limited power of attorney" - e.g., with respect to certain real property interests) or it may be much broader in application. Where the power of attorney is being drafted in advance to plan for incapacity, it should be as broad and general as the client will permit in order to allow the attorney-in-fact to do whatever is necessary to act on the principal's behalf with respect to his or her assets (a "general power of attorney").

In New Jersey, the Revised Durable Power of Attorney Act<sup>1</sup> requires that the power of attorney must be in writing and acknowledged.<sup>2</sup> Although witnessing is not required, it is helpful to have at least one (and preferably two) witnesses in the event the power ever needs to be recorded. In that regard, if the power will need to be recorded, the name and signature of the preparer should appear on the front page and the names of the witnesses should be typed in below their signatures.<sup>3</sup> In addition, although there is no requirement that the attorney-in-fact sign the power of attorney, having the attorney-in-fact's signature on the form will make it easier for it to be identified upon presentation of the power of attorney to a third party.

A “durable” power of attorney, which is authorized by the statute, survives the disability or incapacity of the principal.<sup>4</sup> In order to be durable, the document must expressly provide that “this power of attorney shall not be affected by subsequent disability or incapacity of the principal, or lapse of time,” or similar words to show that the principal intends for the power of attorney to be effective notwithstanding the principal's subsequent disability or incapacity.<sup>5</sup> Given the importance of the power of attorney in incapacity planning, this language should always be included.

Aside from a few requirements as to the wording necessary in order to grant the attorney-in-fact the authority to exercise certain powers (e.g., the authority to conduct banking transactions<sup>6</sup>) or that certain powers be expressly provided for in the document (e.g., the power to make a gift<sup>7</sup>) the statute is mostly silent as to any specific form or drafting requirements for the power of attorney. For this reason, it is advisable when preparing a power of attorney to expressly provide for any and all powers that may be needed by the attorney-in-fact.

The power of attorney may be drafted to be effective immediately or only upon the disability or incapacity of the principal. This latter power of attorney is known as a “springing” power of attorney. In order to make the power of attorney springing, language must be included to provide that “this power of attorney shall become effective upon the disability or incapacity of the principal”<sup>8</sup> and a method of determining incapacity or disability should be clearly set forth. In addition, if the power of attorney is only effective in the event of incapacity, HIPAA language

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<sup>1</sup> N.J.S.A. 46:2B-8.1, *et. seq.*

<sup>2</sup> N.J.S.A. 46:2B-8.9.

<sup>3</sup> See N.J.S.A. 46:15-1.1 for what constitutes recordable form.

<sup>4</sup> N.J.S.A. 46:2B-8.1.

<sup>5</sup> N.J.S.A. 46:2B-8.2(b) .

<sup>6</sup> See N.J.S.A. 46:2B-11 which provides that the following language should be used in order to provide the attorney-in-fact with the requisite banking powers “to conduct banking transactions as set forth in Section 2 of P.L. 1991, Chapter 95 (C.46:2b-11)”.

<sup>7</sup> See N.J.S.A. 46:2B-8.13(a).

<sup>8</sup> N.J.S.A. 46:2B-8.2(b).

should be included which permits the attorney-in-fact to be authorized to receive medical information with respect to the principal.

One of the major issues with using a springing power of attorney is that incapacity has to be determined before the power is effective. Third parties will want evidence of the incapacity before working with the attorney-in-fact, which can become quite cumbersome to have to show each time. To avoid this issue, the springing power of attorney should expressly define how incapacity is to be determined and state the documentation that a third party can rely on.

It is common for the principal to name a spouse or other family members to the role of attorney-in-fact, but this is not a requirement. Sometimes it may be a good friend that is appointed to this role, or someone who is acting in other fiduciary capacities with respect to the principal's estate planning (e.g., executor, trustee, etc.). Due to the great authority that is being conferred, the attorney-in-fact should be an individual that that principal trusts implicitly (particularly where the power is effective immediately).

The principal can name multiple attorneys-in-fact.<sup>9</sup> In this case, unless the power of attorney provides otherwise, if one or more attorneys-in-fact fails to serve as a result of death, resignation or disability, those attorneys-in-fact who remain may continue to exercise all authority granted. The power of attorney may provide that the attorneys-in-fact may act severally or separately. Alternatively, it may provide that the attorneys-in-fact shall act jointly, in which case all appointed and remaining attorneys-in-fact must concur in order to exercise any power. If the power of attorney does not expressly provide whether the attorneys-in-fact are to act severally or separately, or are to act jointly, such attorneys-in-fact must act jointly. The power of attorney may also provide that the attorneys-in-fact act successively. Unless the power of attorney otherwise provides for the conditions under which a successor is qualified to act, the successor may act only upon the death, the written resignation, or the disability of the predecessor named attorney-in-fact.

The power of attorney remains effective until the earlier of revocation or death of the principal. In order to be revoked, the attorney-in-fact must have notice of the revocation.<sup>10</sup> A power of attorney is revoked when the principal has caused all executed originals of the power of attorney to be physically destroyed, when the principal has signed and caused to be acknowledged in the manner set forth in R.S.46:14-2.1 a written instrument of revocation, or when the principal has delivered to the attorney-in-fact a written revocation.<sup>11</sup> Unless expressly provided, the subsequent execution of another power of attorney does not revoke a power of attorney.

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<sup>9</sup> N.J.S.A. 46:2B-8.7.

<sup>10</sup> N.J.S.A. 46:2B-8.5.

<sup>11</sup> N.J.S.A. 46:2B-10.

There are two main issues that attorneys have encountered with power of attorney forms in the past. First, if the power of attorney was signed several years before it needed to be used, certain institutions have been known to reject the power on the basis of it being “stale”.<sup>12</sup> In order to avoid this situation, the client may want to execute a new power of attorney every few years in an effort to keep it fresh. Second, certain institutions will only accept a power of attorney that is on their own form. If the client has major assets at any particular institution, it is advisable to have the client check whether that institution will accept the power of attorney as drafted or whether the institution’s form must be used to deal with the assets located there. If a power of attorney is not accepted by an institution at a time when the principal is already incapacitated, a court proceeding will need to be instituted to appoint someone who can handle the principal’s assets, thereby defeating the whole purpose of the power of attorney. For the above reasons, some attorneys prefer to use a revocable living trust to help deal with issues of incapacity, as discussed later in this chapter.

## II. ADVANCE DIRECTIVES FOR HEALTH CARE

The New Jersey Advance Directives for Health Care Act<sup>13</sup> was enacted in consideration of the fundamental right possessed by competent adults, in collaboration with their health care providers, to control decisions about their own health care and to make voluntary, informed choices to accept, to reject, or to choose among alternative courses of medical and surgical treatment.<sup>14</sup>

This statute permits the use of an advance directive for health care to set forth the declarant’s treatment philosophy and to appoint an agent, known as a health care representative, to make the declarant’s medical decisions in the event the declarant is unable to do so. “Advance directive for health care” or “advance directive” means a writing executed in accordance with the requirements of the act, and may include a proxy directive or an instruction directive, or both.<sup>15</sup> A “proxy directive” is a writing which designates a health care representative to make medical decisions for the declarant in the event the declarant subsequently lacks decision making capacity. The declarant will typically name his or her spouse, a close family member, or a good friend as health care representative, although any competent adult may serve.<sup>16</sup> A declarant may designate one or more alternate health care representatives, listed in order of priority.

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<sup>12</sup> See N.J.S.A. 46:2B-10 which provides that if a spouse or blood relative is named as attorney-in-fact, the power should be honored regardless of when written. For all others, there is a sliding 10 year period after which the document may be deemed stale.

<sup>13</sup> N.J.S.A. 26:2H-53, *et. seq.*

<sup>14</sup> N.J.S.A. 26:2H-54(a).

<sup>15</sup> N.J.S.A. 26:2H-55.

<sup>16</sup> N.J.S.A. 26:2H-58(a)(1).

If the declarant wishes to name a physician, the physician can serve as health care representative only if he or she is not concurrently serving as the declarant's attending physician.<sup>17</sup> An operator, administrator or employee of a health care institution in which the declarant is a patient or resident cannot serve as the declarant's health care representative unless the operator, administrator or employee is related to the declarant by blood, marriage, domestic partnership or adoption.<sup>18</sup>

The proxy directive should be drafted to include HIPAA language which authorizes the agent to speak to the declarant's physician about the declarant's medical condition.

An "instruction directive" or "living will" provides a statement of personal wishes regarding health care in the event of loss of decision making capacity. A declarant may execute an instruction directive stating the declarant's general treatment philosophy and objectives and/or the declarant's specific wishes regarding the provision, withholding or withdrawal of any form of health care, including life-sustaining treatment.<sup>19</sup> Life-sustaining treatment" means the use of any medical device or procedure, artificially provided fluids and nutrition, drugs, surgery or therapy that uses mechanical or other artificial means to sustain, restore or supplant a vital bodily function, and thereby increase the expected life span of a patient.<sup>20</sup> If the declarant is female, she may include information as to what effect the advance directive will have if she is pregnant.

There is no one form for a living will and it should be drafted with careful consideration of each client's wishes and desires. Some clients want to be removed from any life sustaining treatment and desire the administration of pain relief even if it may shorten the course of their remaining life (assuming they are already terminally ill). Other clients wish to stay on life support as long as their families can afford the financial burden. Still other clients have religious beliefs with respect to how this should be handled and would like those beliefs respected by incorporating them into a living will.

While not required, an instruction directive may be executed contemporaneously with, or be attached to, a proxy directive.

In order to be properly executed, an advance directive must be:

- 1) signed and dated by, or at the direction of, the declarant in the presence of two subscribing adult witnesses who must attest that the declarant is of sound mind and free of duress and undue influence,<sup>21</sup> or

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<sup>17</sup> N.J.S.A. 26:2H-58(a)(2)

<sup>18</sup> Id.

<sup>19</sup> N.J.S.A. 26:2H-58(b).

<sup>20</sup> N.J.S.A. 26:2H-55.

<sup>21</sup> N.J.S.A. 26:2H-56.

- 2) signed and dated by, or at the direction of, the declarant and acknowledged by the declarant before a notary public, attorney at law, or other person authorized to administer oaths.

A designated health care representative cannot act as a witness to the execution of an advance directive.

The advance directive becomes operative when (1) it is transmitted to the attending physician or to the health care institution, and (2) it is determined that the patient lacks capacity to make a particular health care decision.<sup>22</sup> It is the attending physician who determines whether the patient lacks capacity to make a particular health care decision. The determination must be stated in writing and must include the attending physician's opinion concerning the nature, cause, extent, and probable duration of the patient's incapacity.<sup>23</sup> Subject to certain exceptions, the attending physician's determination of a lack of decision making capacity must also be confirmed by one or more physicians in writing.<sup>24</sup>

An advance directive may be revoked in either of the following ways:

- 1) Notification, orally or in writing, to the health care representative, physician, nurse or other health care professional, or other reliable witness, or by any other act evidencing an intent to revoke the document; or
- 2) Execution of a subsequent proxy directive or instruction directive, or both, with the proper formalities for valid execution.<sup>25</sup>

In addition, if the declarant's spouse or domestic partner is named as health care representative, the statute provides for automatic revocation of such designation upon divorce or legal separation, in the case of a spouse, or in the case of termination of a domestic partnership.<sup>26</sup>

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<sup>22</sup> N.J.S.A. 26:2H-59(a).

<sup>23</sup> N.J.S.A. 26:2H-60(a).

<sup>24</sup> N.J.S.A. 26:2H-60(b).

<sup>25</sup> N.J.S.A. 26:2H-57(b).

<sup>26</sup> N.J.S.A. 26:2H-57(c).

### III. EXECUTION OF ESTATE PLANNING DOCUMENTS

A. POWERS OF ATTORNEY – Must be signed and notarized (but witnesses not required). N.J.S. 46:2B-8.9.

B. ADVANCE DIRECTIVES FOR HEALTH CARE – Must be notarized or witnessed by two individuals (but the health care representative can not serve as a witness). N.J.S. 26:2H-56.

#### C. WILLS

1. GENERAL FORMALITIES – Must be witnessed, but not notarized. See N.J.S. 3B:3-2(a) which states:

- a. *Except as provided in subsection b. and in N.J.S. 3B:3-3, a will shall be:*
- (1) in writing;*
  - (2) signed by the testator or in the testator's name by some other individual in the testator's conscious presence and at the testator's direction; and*
  - (3) signed by at least two individuals, each of whom signed within a reasonable time after each witnessed either the signing of the will as described in paragraph (2) above or the testator's acknowledgment of that signature or acknowledgment of the will.<sup>27</sup>*

Any individual generally competent to be a witness may act as a witness to a will.<sup>28</sup>

PRACTICE TIP: Although the statute provides that the will is not invalidated if signed by an interested witness,<sup>29</sup> the best practice is always to have the will signed by two disinterested witnesses.

2. SELF PROVING WILLS – If the Will is self-proved, there is no need to locate the witnesses to the execution of the Will after the testator's death to have them sign a Proof of Witness form.

Wills can be self-proved at the time of the execution of the Will or after. N.J.S. 3B:3-4 and 3-5.

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<sup>27</sup> N.J.S.A. 3B:3-2.

<sup>28</sup> N.J.S.A. 3B:3-7

<sup>29</sup> N.J.S.A. 3B:3-8.

### 3. NONTRADITIONAL WILL SIGNINGS

(a) Holographic Wills - N.J.S.A. 3B:3-2 (b) recognizes the validity of a holographic will as a “writing intended as a will” even if it does not comply with the requirements set forth above and whether or not it is witnessed as long as the signature and material portions of the document are in the testator's handwriting.<sup>30</sup>

(b) Other Writings Intended as Wills - N.J.S.A. 3B:3-3 provides that a document not executed in compliance with N.J.S.3B:3-2 will be treated as if executed in compliance with N.J.S.3B:3-2 if the proponent of the document or writing establishes by clear and convincing evidence that the decedent intended the document or writing to constitute:

- (1) *the decedent's will;*
- (2) *a partial or complete revocation of the will;*
- (3) *an addition to or an alternation of the will; or*
- (4) *a partial or complete revival of his formerly revoked will or of a formerly revoked portion of the will.*

The Appellate division has stated this provision should be “liberally construed” and “represents a relaxation of the rules regarding formal execution of Wills so as to **effectuate the intent of the Testator.**”<sup>31</sup> (emphasis added).

“[F]or a writing to be admitted into probate as a will under N.J.S.A. 3B:3-3, the proponent of the writing intended to constitute such a will must provide, by clear and convincing evidence, that: (1) the decedent actually reviewed the document in question; and (2) thereafter gave his or her final assent to it.”<sup>32</sup> “A writing offered under N.J.S.A. 3B:3-3 need not be signed by the testator to be admitted to probate.”<sup>33</sup>

#### D. REMOTE NOTARIZATION

· S2508/A4250- Signed into law on July 22, 2021. Revises law concerning notaries and notarial acts and authorizes electronic signatures.

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<sup>30</sup> Id.

<sup>31</sup> In re Estate of Ehrlich, 427 N.J. Super., 64, 72 (App. Div. 2012)

<sup>32</sup> In re Prob. of Will & Codicil of Macool, 416 N.J. Super. 298, 310 (App Div. 2010).

<sup>33</sup> Id. at 311.



- Prior law regarding remote notarization (A3903/S2336 enacted as P.L. 2020, Chapter 26) was only effective during the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020. The new law is permanent legislation.

- With respect to Wills, the new law (S2508/A4250) is essentially the same as the old law (A3903/S2336):

- wet ink signature required for Notary (remote ink signed notarization versus remote online notarization)
- does not authorize remote witnessing, just remote notarization
- does not authorize the testator to sign electronically (no doc-u-sign)

#### E. UNIFORM ELECTRONIC WILLS ACT

- Would allow (1) Will to be executed and maintained in electronic format and (2) Remote witnessing

#### IV. REVOCABLE LIVING TRUSTS

Revocable trusts are typically used to manage the client's assets during his or her lifetime and are generally established for the client's benefit. This type of trust is often utilized to achieving a client's basic estate planning goals.

Generally, a revocable living trust should be considered for clients in the following situations:

- They have assets in more than one state;
- They wish to avoid the cost and time delays associated with probate;
- They are concerned about the privacy that is lost when a will is offered for probate and becomes a public document; and/or
- They wish to ensure ease of administering their assets in the event they become incapacitated.

Other reasons that have been offered for planning with revocable trusts in New Jersey include: 1) revocable trusts may be amended without the same formalities required for a will, and 2) assets in a revocable trust appear to be exempt from the tax waiver requirements that are otherwise imposed before certain assets can be distributed from an estate.

It should be noted at the outset that a revocable living trust does not offer any asset protection to the client and does not reduce the client's estate taxes in any way that cannot be accomplished through a will. Clients often have a misconception or have been ill-advised about these two points, and it is best to clarify them from the beginning of the planning process.

Revocable living trusts are generally established with the client serving as the trustor or grantor (the trust maker) of the trust, the beneficiary of the trust, and also the initial trustee of the trust. There is no separate tax identification number that is needed for the revocable living trust and no separate tax return is filed for a revocable living trust while the client is alive and the trust is revocable (all income and expense of a revocable trust is reported on the client's personal income tax return<sup>34</sup>). The trust is generally drafted to provide that it can be amended or revoked at any time.

A revocable living trust can be analogized to an invisible box into which the client places his or her assets. The box is "invisible" because, during the client's lifetime (while the trust is revocable), nobody can tell that the assets are held inside the box unless they check the title to the asset. Once the client dies, however, the trust becomes irrevocable and the box becomes

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<sup>34</sup> See IRC Section 676 and Treas. Reg. Section 1.671-4.

solid, at which point an outsider cannot see which assets are held in the box and how the assets are to be distributed.

An asset is transferred into a trust by changing the way title is held to the asset (e.g., instead of the title to a bank account being held as “Judy Brown”, it would be retitled to “Judy Brown, Trustee of the Judy Brown Revocable Living Trust dated December 15, 2020”). Note that the ownership of certain assets, such as life insurance contracts and retirement plan assets, cannot be transferred into the revocable living trust. In addition, certain other assets, such as shares in a co-operative apartment, are subject to the rules of the governing authority, in this case the co-op board, which determines whether or not the asset can be placed in the revocable living trust. Any asset that is transferred into the trust passes free of probate upon the client’s death. However, the asset is still included in the client’s taxable estate for estate tax purposes.

During the client’s lifetime, as long as the client is trustee, the client manages the assets in the trust and the assets are available to the client for his or her use. If the client becomes incapacitated or no longer wishes to serve as trustee, the individual or corporate institution designated as successor trustee steps up to continue managing the assets in the trust on the client’s behalf. When the client passes away, assets in the trust are distributed in the manner that the client has set forth in the trust agreement.

When a revocable living trust is part of an estate plan, the dispositive provisions will generally appear in the trust agreement and not the will. The client will still need a will in order to handle the probate of any assets that were not placed in the trust during the client’s lifetime. In addition, if the client has minor children, the will is needed to nominate the guardians for those minor children. Finally, the will is needed if the client wishes to exercise a power of appointment which by its terms requires that it be exercised in the client’s will. When a will is working in conjunction with a revocable living trust, the will basically serves to pour over any assets that are outside the trust into the trust at the time of the client’s death. This is appropriately called a “pour over will”.

The trust agreement for the revocable living trust serves as the roadmap for the trust once it is established. In the trust agreement, the client should designate the individuals or institutions that are to serve as successor trustees of the revocable living trust upon the client’s incapacity and upon the client’s death. If assets remaining in the client’s trust are to be distributed in further trust, the client will need to designate the trustees and successor trustees of those continuing trusts. In addition, the client must set forth how assets are to be distributed upon the client’s death, who will be the beneficiaries, the manner in which distributions will be made from any resulting trusts, who will be the remainder beneficiaries of those trusts, and who will be the contingent beneficiaries. The trust agreement should set forth the rights, responsibilities, and powers of the trustees, the manner in which trustees may resign or in which vacancies in the position of trustee are to be filled, and how death taxes will be paid upon the client’s death.

In order to avoid any possibility that a durable power of attorney may not be accepted when a client does in fact become incapacitated, some attorneys prefer to plan with a revocable living trust.

The ability to appoint successor trustees who can step into the shoes of the client upon a finding of disability and with the ease of facilitating the transfer of authority to the successor trustee are what make the revocable living trust attractive for incapacity planning. The client gets to select the people or institutions that he or she believes will best handle the financial assets in the estate.

The trust agreement should clearly define incapacity and the process by which a trustee is to be removed if found to be incapacitated. Because of the difficulty associated with getting an incapacitated person to remove himself or herself from the position of trustee, the trust agreement can also provide that a finding of incapacity is not required for removal if the successor trustee believes the trustee is incapacitated, but if the trustee disagrees then a doctor's note must be provided to that effect within a set number of days.

#### N.J.S.A. 3B:31-18 Methods of Creating Trust.

A trust may be created by:

- a. transfer of property under a written instrument to another person as trustee during the settlor's lifetime or by will or other written disposition taking effect upon the settlor's death;
- b. written declaration by the owner of property that the owner holds identifiable property as trustee; or
- c. written exercise of a power of appointment in favor of a trustee.

#### N.J.S.A. 3B:31-19(a) Requirements for Creation.

A trust is created only if:

- (1) the settlor has capacity to create a trust;
- (2) the settlor indicates an intention to create the trust;
- (3) the trust has a definite beneficiary or is:
  - (a) a charitable trust;
  - (b) a trust for the care of an animal, as provided in N.J.S. 3B:31-24; or
  - (c) a trust for a noncharitable purpose, as provided in N.J.S.3B:31-25;
- (4) the trustee has duties to perform; and
- (5) the same person is not the sole trustee and sole beneficiary of all beneficial interests.

## V. GUARDIANSHIPS

A guardianship proceeding will need to be instituted in the event the client is incapacitated and does not have an agent appointed to manage his or her affairs. In New Jersey, guardianship actions are filed in the Superior Court, Chancery Division, and are governed by Rule 4:86 and N.J.S.A. 3B:12-24 *et seq.*

A guardian will only be appointed if the Court determines that the client qualifies as an “incapacitated individual.” An “incapacitated individual” is defined as an individual who is impaired by reason of mental illness or mental deficiency to the extent that he or she lacks sufficient capacity to govern himself or herself and manage his or her affairs.<sup>35</sup> The term “incapacitated individual” is also used to designate an individual who is impaired by reason of physical illness or disability, chronic use of drugs, chronic alcoholism or other cause (except minority) to the extent that he lacks sufficient capacity to govern himself and manage his affairs.<sup>36</sup>

A guardianship action is initiated by filing a petition by way of Verified Complaint and Order to Show Cause with the Court, along with the reports of two physicians certifying that the alleged incapacitated person (“AIP”) is unable to make decisions for himself or herself. An inventory of the AIP’s assets, together with any actual or anticipated sources of income, must also be filed with the Verified Complaint. The petition should ask the court to determine whether the AIP is incapacitated and, if so, who should serve as the guardian. The petition should also propose the guardian to be appointed if the Court concludes that the AIP is incapacitated.

The Court will appoint an attorney to represent the AIP. This attorney will conduct a thorough review of the relevant issues, will meet with the AIP and other people having personal knowledge of the AIP’s condition and property, and will prepare a report for the court summarizing the attorney’s findings with respect to the AIP’s competence and the suitability of the proposed guardian.

After all the reports are filed, the judge will review the paperwork and the Court will decide whether to hold a hearing. If the guardianship is uncontested, no or only limited testimony may be required. If, however, the guardianship is contested, a full hearing will be required. Usually, the Court will issue an Order at the hearing granting or denying the petition. If the AIP is adjudicated incapacitated, he or she becomes a ward of the Court and a guardian will be appointed.

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<sup>35</sup> N.J.S.A. 3B:1-2.

<sup>36</sup> Id.

If the court finds that an individual is incapacitated and does not have capacity to govern himself or manage his affairs, the court may appoint a general guardian to exercise all rights and powers of the incapacitated person.<sup>37</sup> If, on the other hand, the court finds that an individual is incapacitated and lacks the capacity to do some, but not all, of the tasks necessary to care for himself, the court may appoint a limited guardian of the person, limited guardian of the estate, or limited guardian of both the person and estate.<sup>38</sup>

Once a guardian has been appointed, he or she must appear before the county Surrogate to qualify and to receive Letters of Guardianship. The statute provides that Letters of Guardianship will be granted to the spouse or domestic partner of the alleged incapacitated person if the spouse is living with such person as man and wife or as a domestic partner at the time the incapacitation arose, or to the incapacitated person's heirs, or friends, or thereafter first consideration will be given to the Office of the Public Guardian for Elderly Adults in the case of adults within the statutory mandate of the office, or if none of them will accept the letters or it is proven to the court that no appointment from among them will be to the best interest of the incapacitated person or the estate, then to any other proper person as will accept the same, and if applicable, in accordance with the professional guardianship requirements of P.L.2005, c.370 (C.52:27G-32 et al.).<sup>39</sup>

Irrespective of whether a general or limited guardian is appointed, the guardian of the estate will need to furnish a bond unless relieved from doing so by the court.<sup>40</sup> The bond requirement is there to protect the ward against any property loss that could result from an act of misfeasance or malfeasance committed by the guardian in relation to his or her service. Once appointed, the guardian must file an inventory of the ward's income and assets with the Surrogate's office<sup>41</sup> and must annually file a guardianship report detailing the status of the ward's condition, health, income and assets.

If the ward recovers capacity, the Superior Court may, on summary action filed by the ward or the guardian, adjudicate that the ward has returned to full or partial competency and restore to that person his civil rights and estate as it exists at the time of the return to competency if the court is satisfied that the person has recovered his sound reason and is fit to govern himself and manage his affairs.<sup>42</sup>

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<sup>37</sup> N.J.S.A. 3B:12-24.1(a).

<sup>38</sup> N.J.S.A. 3B:12-24.1(b).

<sup>39</sup> N.J.S.A. 3B:12-25.

<sup>40</sup> N.J.S.A. 3B:12-24.1(a) and N.J.S.A. 3B:12-24.1(b).

<sup>41</sup> N.J.S.A. 3B:16-8.

<sup>42</sup> N.J.S.A. 3B: 12-28.

## **VI. PLANNING FOR THE INCAPACITY OF A BENEFICIARY**

Another often overlooked area of planning involves planning for the current or potential incapacity of any beneficiary of the client's estate plan. When advising the client, it is important to ask whether any intended beneficiary has special needs which may need to be addressed in the estate plan. Even if there is no beneficiary today who has special needs, it is entirely possible that such circumstances may arise in the future by the time a beneficiary is paid out his or her inheritance.

If an inheritance is distributed to a beneficiary who otherwise qualifies for governmental benefits, the beneficiary may lose the governmental benefits. If the inheritance is not sufficient to cover the amount that was previously received from the government, the beneficiary will be seriously disadvantaged.

One way to plan for this type of situation is to have language in the dispositive provisions of the governing instrument which provide for assets that would otherwise be distributed to an incapacitated beneficiary to instead be held in trust in a manner that does not disqualify the beneficiary from receiving governmental benefits until the incapacity is removed. The beneficiary would only be entitled to discretionary distributions for supplemental needs from the trust in such instance. This type of trust is called a "supplemental needs trust". It often is (but should not be) confused with a "special needs trust". Among the differences between these two types of trusts are that a special needs trust is one which is established by statute and court order for a beneficiary with his or her own funds whereas a supplemental needs trust is established with third party trusts. Funds that are not expended from a special needs trust must be used to repay the government for certain benefits when the beneficiary dies. This is not the case with a supplemental needs trust, which may distribute any remaining assets in accordance with the terms of the trust.

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[Second Reprint]

**SENATE, No. 2508**

**STATE OF NEW JERSEY**

**219th LEGISLATURE**

INTRODUCED JUNE 4, 2020

**Sponsored by:**

**Senator VIN GOPAL**

**District 11 (Monmouth)**

**Senator LINDA R. GREENSTEIN**

**District 14 (Mercer and Middlesex)**

**Co-Sponsored by:**

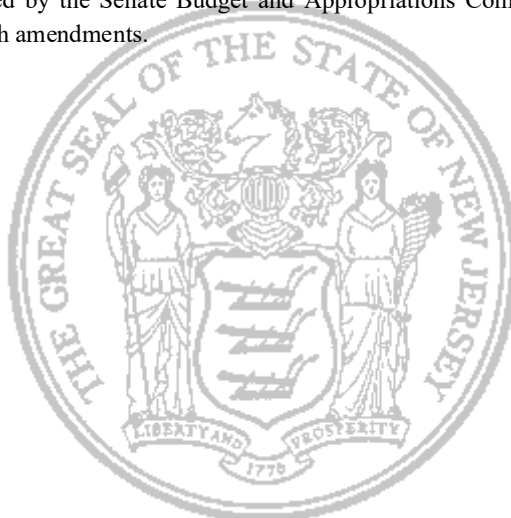
**Senators Singleton, Pou and Diegnan**

**SYNOPSIS**

Revises law concerning notaries and notarial acts; authorizes electronic signatures.

**CURRENT VERSION OF TEXT**

As reported by the Senate Budget and Appropriations Committee on June 17, 2021, with amendments.



**(Sponsorship Updated As Of: 2/11/2021)**

## S2508 [2R] GOPAL, GREENSTEIN

2

1 AN ACT concerning notaries, <sup>1</sup>and<sup>1</sup> amending <sup>1</sup>**["and]** <sup>1</sup>  
 2 supplementing <sup>1</sup>and repealing<sup>1</sup> various parts of the statutory  
 3 law.

4  
 5 **BE IT ENACTED** by the Senate and General Assembly of the State  
 6 of New Jersey:

7  
 8 1. Section 1 of P.L.1979, c.460 (C.52:7-10) is amended to read  
 9 as follows:

10 1. Short title.

11 This act shall be known and may be cited as the **["Notaries**  
 12 **Public Act of 1979."]** "New Jersey Law on Notarial Acts."  
 13 (cf: P.L.1979, c.460, s.1)

14  
 15 2. (New section) Definitions.

16 As used in P.L. , c. (C. ) (pending before the Legislature  
 17 as this bill):

18 a. "Acknowledgment" means a declaration by an individual  
 19 before a notarial officer that the individual has signed a record for  
 20 the purpose stated in the record and, if the record is signed in a  
 21 representative capacity, that the individual signed the record with  
 22 proper authority and signed it as the act of the individual or entity  
 23 identified in the record.

24 b. "Electronic" means relating to technology having electrical,  
 25 digital, magnetic, wireless, optical, electromagnetic, or similar  
 26 capabilities.

27 c. "Electronic signature" means an electronic symbol, sound,  
 28 or process attached to, or logically associated with, a record and  
 29 executed or adopted by an individual with the intent to sign the  
 30 record.

31 d. "In a representative capacity" means acting as:

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

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

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

37 (4) An authorized representative of another in any other  
 38 capacity.

39 e. <sup>2</sup>"Non-attorney applicant" means an applicant for an initial or  
 40 renewal commission as a notary public who is not also a licensed  
 41 attorney-at-law in this State.

42 f.<sup>2</sup> "Notarial act" means an act, whether performed with respect  
 43 to a tangible or electronic record, that a notarial officer may  
 44 perform under the laws of New Jersey. The term includes:

**EXPLANATION – Matter enclosed in bold-faced brackets **["thus"]** in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup>Senate SJU committee amendments adopted December 14, 2020.

<sup>2</sup>Senate SBA committee amendments adopted June 17, 2021.

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- 1 (1) taking an acknowledgment,  
 2 (2) administering an oath or affirmation,  
 3 (3) taking a verification on oath or affirmation,  
 4 (4) witnessing or attesting a signature,  
 5 (5) certifying or attesting a copy or deposition, and  
 6 (6) noting a protest of a negotiable instrument.
- 7 <sup>2</sup>**[f.] g.**<sup>2</sup> “Notarial officer” means a notary public or other  
 8 individual authorized by law to perform a notarial act.
- 9 <sup>2</sup>**[g.] h.**<sup>2</sup> “Notary public” means an individual commissioned  
 10 by the State Treasurer to perform a notarial act.
- 11 <sup>2</sup>**[h.] i.**<sup>2</sup> “Official stamp” means a physical image affixed to or  
 12 embossed on a tangible record or an electronic image attached to, or  
 13 logically associated with, an electronic record.
- 14 <sup>2</sup>**[i.] j.**<sup>2</sup> “Person” has the meaning ascribed to it in R.S.1:1-2.
- 15 <sup>2</sup>**[j.] k.**<sup>2</sup> “Record” means information that is inscribed on a  
 16 tangible medium or that is stored in an electronic or other medium  
 17 and is retrievable in perceivable form.
- 18 <sup>2</sup>**[k.] l.**<sup>2</sup> “Sign” means, with present intent to authenticate or  
 19 adopt a record:  
 20 (1) To execute or adopt a tangible symbol; or  
 21 (2) To attach to or logically associate with the record an  
 22 electronic symbol, sound, or process.
- 23 <sup>2</sup>**[l.] m.**<sup>2</sup> “Signature” means a tangible symbol or an electronic  
 24 signature that evidences the signing of a record.
- 25 <sup>2</sup>**[m.] n.**<sup>2</sup> “Stamping device” means:  
 26 (1) A physical device capable of affixing to or embossing on a  
 27 tangible record an official stamp; or  
 28 (2) An electronic device or process capable of attaching to or  
 29 logically associating with an electronic record an official stamp.
- 30 <sup>2</sup>**[n.] o.**<sup>2</sup> “State” means the State of New Jersey; “other state”  
 31 or “another state” means any state, the District of Columbia, the  
 32 Commonwealth of Puerto Rico, the United States Virgin Islands,  
 33 and any other insular possession or territory of the United States  
 34 other than the State of New Jersey.
- 35 <sup>2</sup>**[o.] p.**<sup>2</sup> “Verification on oath or affirmation” means a  
 36 declaration, made by an individual on oath or affirmation before a  
 37 notarial officer, that a statement in a record is true.  
 38
- 39 3. Section 2 of P.L.1979, c.460 (C.52:7-11) is amended to read  
 40 as follows:  
 41 2. Commission; Term; Application; Renewal.  
 42 a. The State Treasurer **[shall appoint]** may commission so  
 43 many notaries public as the State Treasurer **[shall deem]** deems  
 44 necessary to commission**[, who]**. Notaries public shall hold their  
 45 respective offices for **[the]** a term of five years**[, but may be**  
 46 removed from office at the pleasure of the State Treasurer**].**

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1 b. ~~【A person desiring to be appointed and commissioned】~~ An  
 2 applicant for commission as a notary public shall make application  
 3 to the State Treasurer on a form prescribed by the State Treasurer  
 4 ~~【and endorsed by a member of the Legislature】~~ 'and endorsed by a  
 5 member of the Legislature<sup>1</sup>. Renewals ~~【thereof】~~ shall be made in  
 6 the same manner as the original application. <sup>1</sup>All applications shall  
 7 be submitted electronically.<sup>1</sup>

8 The application form shall provide a notice to the applicant that a  
 9 notary public who is not licensed as an attorney-at-law shall not use  
 10 or advertise the title of lawyer or attorney-at-law, or equivalent  
 11 terms, in ~~【the English language or】~~ any ~~【other】~~ language, which  
 12 mean or imply that the notary public is licensed as an attorney-at-  
 13 law in the State of New Jersey or in any other jurisdiction of the  
 14 United States. The application form shall also state that a notary  
 15 public who advertises ~~【his】~~ the notary public's services in ~~【the~~  
 16 English language or】 any ~~【other】~~ language is required to provide  
 17 with such advertisement a notice in the language of the  
 18 advertisement which contains the following statement or translation  
 19 of the following statement if the advertisement is not in English: "I  
 20 am not an attorney licensed to practice law and may not give legal  
 21 advice about immigration or any other legal matter or accept fees  
 22 for legal advice."

23 c. The ~~【fee to be collected by the】~~ State Treasurer shall collect  
 24 a nonrefundable fee ~~【for that appointment or renewal shall be~~  
 25 \$25.00】 of <sup>1</sup>~~【\$25】~~ <sup>2</sup>~~【\$50】~~ \$25<sup>2</sup> for each commission or renewal.  
 26 In collecting the fee, the State Treasurer shall accept the use of a  
 27 credit card, debit card, or electronic funds transfer.  
 28 (cf: P.L.2014, c.48, s.3)

29

30 4. Section 3 of P.L.1979, c.460 (C.52:7-12) is amended to read  
 31 as follows:

32 3. Qualifications.

33 ~~【No】~~ a. A person ~~【shall be appointed】~~ commissioned as a  
 34 notary public in this State shall:

35 (1) be at the time of appointment at least ~~【unless he is】~~ 18 years  
 36 of age ~~【or older】~~ <sup>1</sup>~~【and a citizen of the United States】~~<sup>1</sup>;

37 (2) be at the time of appointment a legal resident of this State or  
 38 have a place of employment or practice in this State; and

39 (3) not be disqualified to receive a commission under section  
 40 <sup>1</sup>~~【9】~~ <sup>2</sup>~~【7】~~ 9<sup>2</sup> of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the  
 41 Legislature as this bill).

42 b. <sup>2</sup>~~【An】~~ A non-attorney<sup>2</sup> applicant for an initial <sup>2</sup>~~【or~~  
 43 renewed<sup>1</sup><sup>2</sup> commission as a notary public shall <sup>1</sup>~~【provide~~  
 44 satisfactory proof that the applicant has:

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1 (1) completed a six-hour course of study approved by the State  
 2 Treasurer pursuant to subsection a. of section 6 of P.L. \_\_\_\_\_,  
 3 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill); and  
 4 (2) passed an examination prescribed by the State Treasurer  
 5 pursuant to section 7 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the  
 6 Legislature as this bill).  
 7 c. A commissioned notary public applying to renew a  
 8 commission who has satisfactorily completed the six-hour course of  
 9 study required pursuant to subsection a. of section 6 of P.L. \_\_\_\_\_, c.  
 10 (C. \_\_\_\_\_) (pending before the Legislature as this bill) at least one  
 11 time, or who was commissioned for the first time before the  
 12 effective date of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) shall complete the three-  
 13 hour continuing education course as set forth in subsection b. of  
 14 section 6 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the Legislature  
 15 as this bill) and provide satisfactory proof of such completion<sup>2</sup>  
 16 <sup>2</sup>【comply with all educational requirements that the Treasurer sets  
 17 forth in the New Jersey Notary Public Manual. The Treasurer shall  
 18 provide the necessary process for documenting compliance with  
 19 educational requirements through the online application required by  
 20 subsection b. of section 2 of P.L.1979, c.460 (C.52:7-11)<sup>1</sup>】 provide  
 21 satisfactory proof that the applicant has:  
 22 (1) completed a course of study approved by the State Treasurer  
 23 pursuant to subsection b. of section 6 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_)  
 24 (pending before the Legislature as this bill); and  
 25 (2) passed an examination prescribed by the State Treasurer  
 26 pursuant to section 7 of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) (pending before the  
 27 Legislature as this bill).  
 28 d. A non-attorney commissioned notary public applying to  
 29 renew a commission who has satisfactorily completed a course of  
 30 study required pursuant to subsection b. of section 6 of P.L. \_\_\_\_\_, c.  
 31 (C. \_\_\_\_\_) (pending before the Legislature as this bill) at least one  
 32 time, or who was commissioned for the first time before the  
 33 effective date of P.L. \_\_\_\_\_, c. (C. \_\_\_\_\_) shall complete a continuing  
 34 education course as set forth in subsection c. of section 6 of P.L. \_\_\_\_\_,  
 35 c. (C. \_\_\_\_\_) (pending before the Legislature as this bill) and  
 36 provide satisfactory proof of such completion<sup>2</sup>.  
 37 (cf: P.L.1979, c.460, s.3)

38  
 39 5. Section 4 of P.L.1979, c.460 (C.52:7-13) is amended to read  
 40 as follows:

41 4. Commission of Nonresidents; Additional Requirements.  
 42 a. No person shall be denied **【appointment】** a commission as a  
 43 notary public on account of residence outside **【of】** this State,  
 44 provided such person **【resides in a State adjoining this State and】**  
 45 maintains, or is regularly employed in, an office in this State <sup>1</sup>or is  
 46 an employee of a business with its domicile or primary place of

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1 business in this State and performs his employment duties remotely  
 2 from a home office or a co-working space<sup>1</sup>.

3 b. **【Before】** In addition to the requirements of section 3 of  
 4 P.L.1979, c.460 (C.52:7-12), any 【such】 nonresident shall 【be  
 5 appointed and commissioned as a notary public, he shall】 file with  
 6 the State Treasurer 【an affidavit】 at the time of application a  
 7 certificate setting forth 【his】 the residence and the address of the  
 8 applicant, and the 【address of his】 office or place of employment  
 9 of the applicant in this State.

10 c. **【Any】** Once commissioned, any such nonresident notary  
 11 public shall file with the State Treasurer a certificate showing any  
 12 change of residence or change of **【his】** the office or place of  
 13 employment **【address】** of the notary public in this State.

14 (cf: P.L.2014, c.48, s.4)

15

16 <sup>1</sup>**【6.** (New section) Course of Study; Continuing Education.

17 a. An applicant for an initial commission as a notary public  
 18 pursuant to section 2 of P.L.1979, c.460 (C.52:7-11) shall complete  
 19 a six-hour course of study prescribed and approved by the State  
 20 Treasurer. The course of study shall be completed within the six-  
 21 month period immediately preceding the application.

22 b. An applicant for renewal of a commission pursuant to  
 23 section 2 of P.L.1979, c.460 (C.52:7-11) who has previously  
 24 completed the six-hour course of study required pursuant to  
 25 subsection a. of this section at least one time, or who was  
 26 commissioned for the first time before the effective date of P.L. ,

27 c. (C. ) (pending before the Legislature as this bill) shall  
 28 complete a three-hour continuing education course prescribed and  
 29 approved by the State Treasurer. The continuing education course  
 30 shall be completed within the six-month period immediately  
 31 preceding the application.

32 c. The State Treasurer shall prescribe an application form and  
 33 certificate of approval for any notary public course of study and any  
 34 notary public continuing education course proposed by a provider.  
 35 The State Treasurer may also provide a notary public course of  
 36 study and continuing education course.

37 d. The State Treasurer shall compile a list of all persons  
 38 offering an approved course of study and continuing education  
 39 course pursuant to this section and shall provide the list on the  
 40 website of the State Treasurer.

41 e. The six-hour course of study shall cover the statutes,  
 42 regulations, procedures, and ethics for notaries public as described  
 43 in the manual issued by the State Treasurer, and shall include the  
 44 duties and responsibilities of a notary public. The course of study  
 45 shall be provided by classroom instruction.

46 f. The three-hour continuing education course shall cover  
 47 topics which ensure maintenance and enhancement of skill,

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1 knowledge, and competency necessary to perform notarial acts. The  
 2 continuing education course may be provided by either online or  
 3 classroom instruction.】<sup>1</sup>

4

5 <sup>1</sup>【7. (New section) Examination.

6 a. The State Treasurer shall prescribe and administer an  
 7 examination to determine the fitness of an applicant to exercise the  
 8 functions of a notary public as provided in section 2 of P.L.1979,  
 9 c.460 (C.52:7-11). The examination shall:

10 (1) be based on the statutes, rules, regulations, procedures, and  
 11 ethical requirements for notaries public as described in the manual  
 12 issued by the State Treasurer; and

13 (2) include the requirements, functions, duties, and  
 14 responsibilities of a notary public.

15 b. The State Treasurer shall charge a nonrefundable fee which  
 16 shall be payable at the examination site. Such fee shall be  
 17 established or changed by the State Treasurer to defray any proper  
 18 expenses incurred by the Department of the Treasury in  
 19 administering the examination. The fee shall not be fixed at a level  
 20 that will raise amounts in excess of the amount estimated to be so  
 21 required.】<sup>1</sup>

22

23 <sup>2</sup>6. (New section) Course of Study; Continuing Education.

24 a. The provisions of this section do not apply to notaries public  
 25 who are also licensed attorneys-at-law in this State.

26 b. A non-attorney applicant for an initial commission as a  
 27 notary public pursuant to section 2 of P.L.1979, c.460 (C.52:7-11)  
 28 shall comply with all educational requirements that the State  
 29 Treasurer shall set forth in rules adopted pursuant to the  
 30 “Administrative Procedure Act,” P.L.1969, c.410 (C.52:14B-1 et  
 31 seq.). The State Treasurer shall prescribe and approve a course of  
 32 study to foster and confirm applicants’ understanding of the  
 33 principles and standards that govern notarial practices. Applicants  
 34 shall be required to acknowledge that they have read and  
 35 understood the Notary Public Manual and complete any other  
 36 educational programs that the Treasurer may require.

37 c. A non-attorney applicant for renewal of a commission  
 38 pursuant to section 2 of P.L.1979, c.460 (C.52:7-11) who has  
 39 previously completed the educational requirements required  
 40 pursuant to subsection b. of this section at least one time, or who  
 41 was commissioned for the first time before the effective date of  
 42 P.L. , c. (C. ) (pending before the Legislature as this bill)  
 43 shall comply with any additional educational requirements that the  
 44 State Treasurer sets forth in rules adopted pursuant to the  
 45 “Administrative Procedure Act,” P.L.1969, c.410 (C.52:14B-1 et  
 46 seq.). The State Treasurer shall prescribe and approve a continuing

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1 education course for non-attorney applicants seeking a renewal of a  
2 commission pursuant to section 2 of P.L.1979, c.460 (C.52:7-11).

3 d. The State Treasurer shall prescribe an application form and  
4 certificate of approval for any notary public course of study and any  
5 notary public continuing education course proposed by a provider.  
6 The State Treasurer may also provide a notary public course of  
7 study and continuing education course.

8 e. Any course of study developed pursuant to subsections b.  
9 and c. of this section may be given by the State Treasurer or by  
10 independent vendors.

11 f. The State Treasurer shall compile a list of all independent  
12 vendors offering an approved course of study and continuing  
13 education course pursuant to this section and shall provide the list  
14 on the website of the State Treasurer.

15 g. Any course of study for a non-attorney applicant for an  
16 initial commission shall cover the statutes, regulations, procedures,  
17 and ethics for notaries public as described in the manual issued by  
18 the State Treasurer, and shall include the duties and responsibilities  
19 of a notary public. The course of study may be provided by  
20 classroom instruction, by online instruction, or by any other method  
21 approved by the State Treasurer.

22 h. Any continuing education course for a non-attorney  
23 applicant for renewal of a commission shall cover topics which  
24 ensure maintenance and enhancement of skill, knowledge, and  
25 competency necessary to perform notarial acts. The continuing  
26 education course may be provided by online instruction, classroom  
27 instruction, or by any other method approved by the State  
28 Treasurer.

29 i. The Treasurer shall regularly assess the efficacy of the State's  
30 notarial education program. The Treasurer shall adjust the  
31 program's content as notarial technologies and processes evolve,  
32 and publish on the Treasury website, on or before September 30  
33 each year, a report on the state of notary education in New Jersey.  
34 The report shall contain a summary of commissioning activity, an  
35 assessment regarding the need for new or changed educational  
36 content, and the estimated timelines for delivering the new or  
37 changed content.<sup>2</sup>

38

39 <sup>2</sup>7. (New section) Examination.

40 a. The provisions of this section do not apply to applicants who  
41 are licensed attorneys-at-law in this State.

42 b. The State Treasurer shall prescribe an examination to  
43 determine the fitness of a non-attorney applicant to exercise the  
44 functions of a notary public as provided in section 2 of P.L.1979,  
45 c.460 (C.52:7-11). The examination shall:

46 (1) be based on the statutes, rules, regulations, procedures, and  
47 ethical requirements for notaries public as described in the manual  
48 issued by the State Treasurer; and



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1 (2) include the requirements, functions, duties, and  
 2 responsibilities of a notary public.

3 c. The examination required by subsection b. may be given by  
 4 the State Treasurer or by an independent vendor under contract to  
 5 the State Treasurer. If a contract vendor is utilized, the contract  
 6 vendor shall develop and administer the examination in accordance  
 7 with specifications approved by the State Treasurer. The State  
 8 Treasurer shall have the sole responsibility for establishing  
 9 minimum qualifications and passing requirements of candidates  
 10 taking the examination.

11 d. The State Treasurer shall establish a nonrefundable fee  
 12 which shall be payable at the examination site. Such fee shall be  
 13 established or changed by the State Treasurer taking into  
 14 consideration the fee charged by any independent contract vendor to  
 15 develop and administer the examination, and consideration of the  
 16 need to defray any proper expenses incurred by the Department of  
 17 the Treasury in its administration of any independent contract  
 18 vendor administering the examination. The fee shall not be fixed at  
 19 a level that will raise amounts in excess of the amount estimated to  
 20 be so required.<sup>2</sup>

21

22 <sup>1</sup>[8.] <sup>2</sup>[6.] <sup>8.</sup> Section 5 of P.L.1979, c.460 (C.52:7-14) is  
 23 amended to read as follows:

24 5. Oath; Filing; Certificate of Commission.

25 a. Within <sup>1</sup>[45 days] three months<sup>1</sup> of the receipt of a  
 26 commission, each notary public shall take and subscribe an oath  
 27 before **[the clerk of the county in which he resides]** <sup>1</sup>[**any officer**  
 28 **authorized to administer oaths pursuant to R.S.41:2-1]** the clerk of  
 29 the county in which the notary public resides<sup>1</sup>, to: <sup>1</sup>[**(1)**]<sup>1</sup> faithfully  
 30 and honestly **[to]** discharge the duties of **[his]** the office**[.]**; and  
 31 <sup>1</sup>[**(2)**]<sup>1</sup>**[that he will]** make and keep a true record of all such  
 32 matters as are required by law, **[which oath shall be filed with said**  
 33 **clerk. The oath of office of a nonresident notary public shall be**  
 34 **taken and subscribed before the clerk of the county in which he**  
 35 **maintains his office or is employed in this State]** <sup>1</sup>[**including the**  
 36 **requirement to maintain a journal of all notarial acts performed, as**  
 37 **set forth in section 27 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before**  
 38 **the Legislature as this bill)]** which oath shall be filed with <sup>2</sup>[**said**]  
 39 **the**<sup>2</sup> **clerk. The oath of office of a nonresident notary public shall**  
 40 **be taken and subscribed before the clerk of the county in which the**  
 41 **nonresident notary public maintains** <sup>2</sup>[**his**] the notary public's<sup>2</sup>  
 42 office or <sup>2</sup>[**is employed]** the county in which the nonresident  
 43 notary public is an employee of a business with its domicile or  
 44 primary place of business<sup>2</sup> in this State<sup>1</sup>.

45 b. Upon the administration of **[said]** the oath, the **[said clerk]**  
 46 <sup>1</sup>[**officer**] <sup>2</sup>[**said**]<sup>2</sup> clerk<sup>1</sup> shall cause the notary public to **[indorse**

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1 a] endorse the certificate of commission and qualification and shall  
 2 transmit ~~the~~ the certificate to the State Treasurer within 10 days  
 3 of the administration of ~~the~~ the oath. ~~After the administration~~  
 4 of the oath, the clerk shall provide a notice to the person that a  
 5 notary public who is not licensed as an attorney-at-law shall not use  
 6 or advertise the title of lawyer or attorney-at-law, or equivalent  
 7 terms, in the English language or any other language, which mean  
 8 or imply that the notary public is licensed as an attorney-at-law in  
 9 the State of New Jersey or in any other jurisdiction of the United  
 10 States. The notice shall also state that a notary public who  
 11 advertises his services, in the English language or any other  
 12 language, is required to provide with such advertisement a notice  
 13 which contains the following statement: "I am not an attorney  
 14 licensed to practice law and may not give legal advice about  
 15 immigration or any other legal matter or accept fees for legal  
 16 advice." <sup>1</sup>After the administration of the oath, the clerk shall  
 17 provide a notice to the person that a notary public who is not  
 18 licensed as an attorney-at-law shall not use or advertise the title of  
 19 lawyer or attorney-at-law, or equivalent terms, in <sup>2</sup>~~the English~~  
 20 language or] <sup>2</sup> any <sup>2</sup>~~other] <sup>2</sup> language, which mean or imply that~~  
 21 the notary public is licensed as an attorney-at-law in the State of  
 22 New Jersey or in any other jurisdiction of the United States. The  
 23 notice shall also state that a notary public who advertises <sup>2</sup>~~his] the~~  
 24 notary public's <sup>2</sup> services, in <sup>2</sup>~~the English language or] <sup>2</sup> any~~  
 25 <sup>2</sup>~~other] <sup>2</sup> language, is required to provide with such advertisement~~  
 26 a notice <sup>2</sup>in the language of the advertisement <sup>2</sup> which contains the  
 27 following statement <sup>2</sup>or translation of the following statement if the  
 28 advertisement is not in English <sup>2</sup>: "I am not an attorney licensed to  
 29 practice law and may not give legal advice about immigration or  
 30 any other legal matter or accept fees for legal advice." <sup>1</sup>

31 c. ~~The State Treasurer shall cancel and revoke the~~  
 32 ~~appointment of any notary public who fails to take and subscribe~~  
 33 ~~said oath within three months of the receipt of his commission and~~  
 34 ~~any appointment so canceled and revoked shall be null, void and of~~  
 35 ~~no effect] <sup>1</sup>The State Treasurer shall cancel and revoke the  
 36 appointment of any notary public who fails to take and subscribe  
 37 <sup>2</sup>~~said] the <sup>2</sup> oath within three months of the receipt of <sup>2</sup>~~his] the <sup>2</sup>~~~~  
 38 commission and any appointment so canceled and revoked shall be  
 39 null, void and of no effect <sup>1</sup>. A commission authorizes the notary  
 40 public to perform notarial acts. The commission does not provide  
 41 the notary public any immunity or benefit conferred by the law of  
 42 this State on public officials or employees.~~

43 (cf: P.L.2014, c.48, s.5)

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1 <sup>1</sup>[9.] <sup>2</sup>[7.] 9.<sup>2</sup> (New section) Grounds for State Treasurer to  
2 Deny Application, Refuse to Renew Commission, or Revoke,  
3 Suspend, or Limit Commission.

4 a. The State Treasurer may deny an application for commission  
5 as <sup>1</sup>a<sup>1</sup> notary public; refuse to renew a commission of a notary  
6 public; or suspend, revoke, or otherwise limit the commission of a  
7 notary public for any act or omission that demonstrates the  
8 individual lacks the honesty, integrity, competence, or reliability  
9 necessary to act as a notary public, including:

10 (1) failure to comply with P.L.1979, c.460 (C.52:7-10 et seq.),  
11 as amended and supplemented by P.L. , c. (C. ) (pending  
12 before the Legislature as this bill);

13 (2) a fraudulent, dishonest, or deceitful misstatement or  
14 omission in the application for commission as a notary public  
15 submitted to the State Treasurer;

16 (3) a finding against, or admission of liability by, the applicant  
17 or notary public in any legal proceeding or disciplinary action based  
18 on fraud, dishonesty, or deceit, including but not limited to a  
19 violation of section 1 of P.L.1997, c.1 (C.2C:21-31) or section 1 of  
20 P.L.1994, c.47 (C.2C:21-22), but nothing in this paragraph shall be  
21 deemed to supersede P.L.1968, c.282 (C.2A:168A-1 et seq.);

22 (4) a conviction of a crime of the second degree or above, but  
23 nothing in this paragraph shall be deemed to supersede P.L.1968,  
24 c.282 (C.2A:168A-1 et seq.);

25 (5) failure by the notary public to discharge any duty required  
26 by any law, including P.L.1979, c.460 (C.52:7-10 et seq.), any rules  
27 or regulations promulgated thereunder by the State Treasurer, and  
28 any other State or federal law;

29 (6) use of false or misleading advertising or representation by  
30 the notary public representing that the notary is commissioned,  
31 licensed, or authorized to practice or engage in work that the notary  
32 is not commissioned, licensed, or authorized to engage in;

33 (7) in the case of a notary public who is not an attorney licensed  
34 to practice law, any of the following:

35 (a) giving legal advice;

36 (b) acting as an immigration consultant or an expert on  
37 immigration matters;

38 (c) otherwise performing the duties of an attorney licensed to  
39 practice law in New Jersey;

40 (d) a disciplinary or other administrative action resulting in a  
41 finding of culpability if the applicant holds any professional license  
42 regulated by the State; or

43 (e) creating or reinforcing, by any means, a false impression that  
44 the person is licensed to engage in the practice of law in this State  
45 or any other <sup>1</sup>[State] state<sup>1</sup>, including, but not limited to,  
46 committing a violation of P.L.1994, c.47 (C.2C:21-22) or P.L.1997,  
47 c.1 (C.2C:21-31);

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1 (8) failure to take and subscribe to the oath pursuant to section 5  
2 of P.L.1979, c.460 (C.52:7-14) within <sup>2</sup>**[45 days]** three months<sup>2</sup> of  
3 the receipt of a notary public commission;

4 (9) withholding access to or possession of an original record or  
5 photocopy provided by a person who seeks performance of a  
6 notarial act by the notary public, except where allowed by law; or

7 (10) the denial of an application for notary public in another  
8 state; the refusal to renew in another state; or the suspension,  
9 revocation, or other limitation of the commission of the notary  
10 public in another state.

11 b. If the State Treasurer denies an application for notary public;  
12 refuses to renew a commission of a notary public; or suspends,  
13 revokes, or otherwise limits the commission of a notary public, the  
14 applicant or the notary public is entitled to timely notice and  
15 hearing in accordance with the "Administrative Procedure Act,"  
16 P.L.1968, c.410 (C.52:14B-1 et seq.).

17 c. The authority of the State Treasurer to deny an application  
18 for notary public; refuse to renew a commission of a notary public;  
19 or suspend, revoke, or otherwise limit the commission of a notary  
20 public shall not prevent a person aggrieved by the actions of a  
21 notary public from seeking other criminal or civil remedies  
22 provided by law.

23

24 <sup>1</sup>**[10.]** <sup>2</sup>**[8.1]** 10.<sup>2</sup> Section 6 of P.L.1979, c.460 (C.52:7-15) is  
25 amended to read as follows:

26 6. Statewide authority.

27 **[a.]** <sup>2</sup>**[1a.1]**<sup>2</sup> A notary public who has been duly commissioned  
28 and qualified is authorized to perform **[his]** the duties of a notary  
29 public throughout the State.

30 **[b.]** Any notary public, after having been duly commissioned and  
31 qualified, shall, upon request, receive from the clerk of the county  
32 where he has qualified, as many certificates of his commission and  
33 qualification as he shall require for filing with other county clerks  
34 of this State, and upon receipt of such certificates the notary public  
35 may present the same, together with his autograph signature, to  
36 such county clerks as he may desire, for filing. **]**

37 <sup>2</sup>**[1b.]** Any notary public, after having been duly commissioned and  
38 qualified, shall, upon request, receive from the clerk of the county  
39 where the notary public has qualified, as many certificates of  
40 commission and qualification as the notary public shall require for  
41 filing with other county clerks of this State, and upon receipt of  
42 such certificates the notary public may present the same, together  
43 with the notary public's autograph signature, to such county clerks  
44 as the notary public may desire, for filing. <sup>1</sup>**]**<sup>2</sup>

45 (cf: P.L.1979, c.460, s.6)

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1 <sup>1</sup>~~11.~~ <sup>2</sup>~~9.~~ <sup>1</sup> 11. <sup>2</sup> Section 8 of P.L.1979, c.460 (C.52:7-17) is  
2 amended to read as follows:

3 8. Manual.

4 **【The State Treasurer shall, by regulation, fix a fee to be charged**  
5 **to each notary for the costs of printing and distribution to each**  
6 **applicant of a manual prescribing the powers, duties and**  
7 **responsibilities of a notary.】**

8 a. The State Treasurer shall maintain a manual on the  
9 Department of the Treasury's website that sets forth the  
10 requirements, functions, duties, and responsibilities of a notary  
11 public. The manual shall include, but not be limited to, the statutes,  
12 rules, regulations, procedures, and ethical requirements governing a  
13 notary public.

14 b. The manual shall specify that a notary public who is not  
15 licensed as an attorney-at-law shall not use or advertise the title of  
16 lawyer or attorney-at-law, or equivalent terms, in 【the English  
17 language or】 any 【other】 language, which mean or imply that the  
18 notary public is licensed as an <sup>2</sup>【attorney】 attorney-at-law<sup>2</sup> 【or  
19 counselor at law】 in the State of New Jersey or in any other  
20 jurisdiction of the United States. The manual shall also state that a  
21 notary public who advertises 【his】 the <sup>2</sup>【notary's】 notary public's<sup>2</sup>  
22 services in 【the English language or】 any 【other】 language is  
23 required to provide with such advertisement a notice which contains  
24 the following statement or translation of the following statement if  
25 the advertisement is not in English: "I am not an attorney licensed  
26 to practice law and may not give legal advice about immigration or  
27 any other legal matter or accept fees for legal advice." The manual  
28 shall also state that no person shall be 【appointed or reappointed】  
29 commissioned a notary public or receive a renewal of a notary  
30 public commission if <sup>1</sup>【he】 that person<sup>1</sup> has been convicted under  
31 the laws of this State of an offense involving dishonesty, including  
32 but not limited to a violation of section 1 of P.L.1997, c.1 (C.2C:21-  
33 31) or section 1 of P.L.1994, c.47 (C.2C:21-22), or a substantially  
34 similar crime under the laws of another state or the United States or  
35 of a crime of the second degree or above, but nothing in this  
36 paragraph shall be deemed to supersede P.L.1968, c.282  
37 (C.2A:168A-1 et seq.).

38 c. The State Treasurer shall update the information contained  
39 in the manual and the Department of the Treasury's Internet website  
40 【as appropriate】 <sup>1</sup>【at least quarterly】 periodically<sup>1</sup>.  
41 (cf: P.L.2014, c.48, s.6)

42  
43 <sup>1</sup>~~12.~~ <sup>2</sup>~~10.~~ <sup>1</sup> 12. <sup>2</sup> Section 9 of P.L.1979, c.460 (C.52:7-18) is  
44 amended to read as follows:

45 9. Statement by Notary Public after Change in Name; Filing;  
46 Evidence of Continuance of Powers and Privileges.

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1 **After** a. If a notary public adopts a name different from that  
 2 which **he** the notary public used at the time <sup>1</sup>**he** the notary  
 3 public<sup>1</sup> was commissioned, **and** before **he signs his name** the  
 4 notary public provides a signature to any **document** record which  
 5 **he** the notary public is authorized or required to sign as notary  
 6 public, <sup>1</sup>**he** the notary public<sup>1</sup> shall make and sign a statement in  
 7 writing and under oath, on a form prescribed and furnished by the  
 8 State Treasurer, setting out the circumstances under which **he** the  
 9 notary public has adopted the new name. <sup>1</sup>The statement shall state  
 10 whether the new name has been adopted through marriage or civil  
 11 union or by a change of name proceeding or otherwise, and such  
 12 other information as the State Treasurer shall require.<sup>1</sup>

13 b. <sup>1</sup>**The statement shall** **set forth** state whether the new  
 14 name has been adopted through marriage or civil union or by a  
 15 change of name proceeding or otherwise, and such other  
 16 information as the State Treasurer shall require.

17 c.<sup>1</sup> The statement shall be filed in the office of the State  
 18 Treasurer **and** in the office of the clerk of the county where he  
 19 qualified as a notary public and in the office of the clerk of any  
 20 county in which he may have filed a certificate of his commission  
 21 and qualification]. Such statement, or a certified copy **thereof**,  
 22 shall be evidence of the right of **said** the notary public to continue  
 23 to exercise the powers and privileges and perform the duties of a  
 24 notary public in **his** the changed **and** or new name.  
 25 (cf: P.L.2014, c.48, s.7)  
 26

27 <sup>1</sup>**[13.]** <sup>2</sup>**[11.]** 13.<sup>2</sup> Section 10 of P.L.1979, c.460 (C.52:7-19)  
 28 is amended to read as follows:

29 10. Certificate of Notarial Act.

30 **Each** notary public, in addition to subscribing his autograph  
 31 signature to any jurat upon the administration of any oath or the  
 32 taking of any acknowledgement or proof, shall affix thereto his  
 33 name in such a manner and by such means, including, but not  
 34 limited to, printing, typing, or impressing by seal or mechanical  
 35 stamp, as will enable the State Treasurer easily to read said name. **]**

36 a. A notarial act shall be evidenced by a certificate. The  
 37 certificate shall:

38 (1) be executed contemporaneously with the performance of the  
 39 notarial act;

40 (2) be signed and dated by the notarial officer;

41 (3) identify the jurisdiction in which the notarial act is  
 42 performed;

43 (4) contain the title of office of the notarial officer; and

44 (5) if the notarial officer is a notary public, indicate the date of  
 45 expiration of the officer's commission.

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1 b. A certificate of a notarial act is sufficient if it meets the  
 2 requirements of subsection a. of this section and:

3 (1) is in a short form set forth in section <sup>1</sup>[21] <sup>2</sup>[19<sup>1</sup>] 21<sup>2</sup> of  
 4 P.L. , c. (C. ) (pending before the Legislature as this bill);

5 (2) is in a form otherwise permitted by the law of this State;

6 (3) is in a form permitted by the law applicable in the  
 7 jurisdiction in which the notarial act was performed; or

8 (4) sets forth the actions of the notarial officer which shall meet  
 9 the requirements provided in P.L.1979, c.460 (C.52:7-10 et seq.), as  
 10 amended and supplemented by P.L. , c. (C. ) (pending  
 11 before the Legislature as this bill) and any other applicable laws of  
 12 this State.

13 c. By executing a certificate of a notarial act, a notarial officer  
 14 certifies that the officer has made the determinations specified by  
 15 P.L.1979, c.460 (C.52:7-10 et seq.), as amended and supplemented  
 16 by P.L. , c. (C. ) (pending before the Legislature as this  
 17 bill).

18 d. A notarial officer may not affix the officer's signature to, or  
 19 logically associate it with, a certificate until the notarial act has  
 20 been performed.

21 e. If a notarial act is performed regarding a tangible record, a  
 22 certificate shall be part of, or attached to, the record.

23 f. If a notarial act is performed regarding an electronic record,  
 24 the certificate shall be affixed to, or logically associated with, the  
 25 electronic record.

26 g. If the State Treasurer has established standards pursuant to  
 27 P.L.1979, c.460 (C.52:7-10 et seq.), as amended and supplemented  
 28 by P.L. , c. (C. ) (pending before the Legislature as this  
 29 bill) for attaching, affixing, or logically associating the certificate,  
 30 the process shall conform to the standards.

31 (cf: P.L.2014, c.48, s.8)

32

33 <sup>1</sup>[14.] <sup>2</sup>[12.<sup>1</sup>] 14.<sup>2</sup> (New section) Official Stamp.

34 a. The official stamp of a notary public shall:

35 (1) include the name of the notary public, the title "Notary  
 36 Public, State of New Jersey," and the notary public's commission  
 37 expiration date; and

38 (2) be capable of being copied together with the record to which  
 39 it is affixed or attached or with which it is logically associated.

40 b. If a notarial act regarding a tangible record is performed by a  
 41 notary public, an official stamp shall be affixed to or embossed on  
 42 the certificate near the signature of the notary public so as to be  
 43 clear and readable. If a notarial act regarding an electronic record is  
 44 performed by a notary public and the certificate contains the  
 45 information specified in subsection a. of this section, an official  
 46 stamp <sup>1</sup>[may] must<sup>1</sup> be attached to or logically associated with the  
 47 certificate.

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1 <sup>1</sup>[15.] <sup>2</sup>[13.1] 15.2 (New section) Stamping Device.

2 a. A notary public is responsible for the security of the  
3 stamping device used by the notary public and may not allow  
4 another individual to use the device to perform a notarial act, except  
5 at the specific instruction of a notary public who cannot physically  
6 use the stamping device.

7 b. The stamping device is the property of the notary public and  
8 not of the notary public's employer, even if the employer paid for  
9 the stamping device.

10 c. If the stamping device used by the notary public is lost or  
11 stolen, the notary public or <sup>1</sup>[his] the notary public's<sup>1</sup> personal  
12 representative shall notify the State Treasurer of the loss or theft  
13 within 10 days.

14

15 <sup>1</sup>[16.] <sup>2</sup>[14.1] 16.2 (New section) Authority to Perform  
16 Notarial Act.

17 a. A notarial officer may perform a notarial act authorized by  
18 P.L.1979, c.460 (C.52:7-10 et seq.), as amended and supplemented  
19 by P.L. , c. (C. ) (pending before the Legislature as this  
20 bill), and any other applicable law.

21 b. A notarial officer may not perform a notarial act with respect  
22 to a record to which the officer or the officer's spouse or civil union  
23 partner is a party, or in which either of them has a direct beneficial  
24 interest. A notarial act performed in violation of this subsection is  
25 voidable.

26 c. A notarial officer may certify that a tangible copy of an  
27 electronic record is an accurate copy of the electronic record.

28

29 <sup>1</sup>[17.] <sup>2</sup>[15.1] 17.2 (New section) Requirements for Certain  
30 Notarial Acts.

31 a. A notarial officer who takes an acknowledgment of a record  
32 shall determine, from personal knowledge or satisfactory evidence  
33 of the identity of the individual, that the individual appearing before  
34 the officer and making the acknowledgment has the identity  
35 claimed and that the signature on the record is the signature of the  
36 individual.

37 b. A notarial officer who takes a verification of a statement on  
38 oath or affirmation shall determine, from personal knowledge or  
39 satisfactory evidence of the identity of the individual, that the  
40 individual appearing before the officer and making the verification  
41 has the identity claimed and that the signature on the statement  
42 verified is the signature of the individual.

43 c. A notarial officer who witnesses or attests to a signature  
44 shall determine, from personal knowledge or satisfactory evidence  
45 of the identity of the individual, that the individual appearing before  
46 the officer and signing the record has the identity claimed.

47 d. A notarial officer who certifies or attests a copy of a record  
48 or an item that was copied shall determine that the copy is a full,



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1 true, and accurate transcription or reproduction of the record or  
2 item.

3 e. A notarial officer who makes or notes a protest of a  
4 negotiable instrument shall determine the matters set forth in  
5 subsection b. of N.J.S.12A:3-505.

6 f. For the purposes of this section:

7 (1) A notarial officer has personal knowledge of the identity of  
8 an individual appearing before the notarial officer if the individual  
9 is personally known to the notarial officer through dealings  
10 sufficient to provide reasonable certainty that the individual has the  
11 identity claimed.

12 (2) A notarial officer has satisfactory evidence of the identity of  
13 an individual appearing before the notarial officer if the notarial  
14 officer can identify the individual by means of:

15 (a) A passport, driver's license, or government-issued, non-  
16 driver identification card, which is current or expired not more than  
17 three years before the performance of the notarial act; or

18 (b) Another form of government-issued identification, which is  
19 current or expired not more than three years before the performance  
20 of the notarial act, and which:

21 (i) contains the individual's signature or a photograph of the  
22 individual's face; and

23 (ii) is satisfactory to the notarial officer; or

24 (c) A verification of oath or affirmation of a credible witness  
25 personally appearing before the notarial officer <sup>1</sup>or using  
26 communication technology to appear before the notarial officer  
27 pursuant to section <sup>2</sup>[17] 19<sup>2</sup> of P.L. , c. (C. ) (pending  
28 before the Legislature as this bill)<sup>1</sup> and personally known to the  
29 notarial officer or whom the notarial officer can identify on the  
30 basis of a passport, driver's license, or government-issued, non-  
31 driver identification card, which is current or expired not more than  
32 three years before the performance of the notarial act.

33 (3) A notarial officer may require an individual to provide  
34 additional information or identification credentials necessary to  
35 assure the notarial officer of the identity of the individual.

36  
37 <sup>1</sup>[18.] <sup>2</sup>[16.1] 18.<sup>2</sup> (New section) Personal Appearance<sup>1</sup>  
38 **[Required]; Use of Communication Technology<sup>1</sup>.**

39 If a notarial act relates to a statement made in, or a signature  
40 executed on, a record, the individual making the statement or  
41 executing the signature shall appear personally before the notarial  
42 officer <sup>1</sup>or shall use communication technology to appear before the  
43 notarial officer pursuant to section <sup>2</sup>[17] 19<sup>2</sup> of P.L. ,  
44 c. (C. ) (pending before the Legislature as this bill)<sup>1</sup>.

45  
46 <sup>1</sup>[19.] <sup>2</sup>[17.1] 19.<sup>2</sup> (New section) Notarial Act Performed by  
47 Remotely Located Individual.

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1 a. As used in this section:

2 (1) “Communication technology” means an electronic device or  
3 process that:

4 (a) allows a notarial officer and a remotely located individual to  
5 communicate with each other simultaneously by sight and sound;  
6 and

7 (b) when necessary and consistent with other applicable law,  
8 facilitates communication with a remotely located individual who  
9 has a vision, hearing, or speech impairment.

10 (2) “Foreign state” means a jurisdiction other than the United  
11 States, a state, or a federally recognized Indian tribe.

12 (3) “Identity proofing” means a process or service by which a  
13 third person provides a notarial officer with a means to verify the  
14 identity of a remotely located individual by a review of personal  
15 information from public or private data sources.

16 (4) “Outside the United States” means a location outside the  
17 geographic boundaries of the United States, Puerto Rico, the United  
18 States Virgin Islands, and any territory, insular possession, or other  
19 location subject to the jurisdiction of the United States.

20 (5) “Remotely located individual” means an individual who is  
21 not in the physical presence of a notarial officer performing a  
22 notarial act under subsection c.

23 b. This section does not apply to a record to the extent it is  
24 governed by<sup>2</sup> [

25 (1)]<sup>2</sup> <sup>1</sup>[a law governing the creation and execution of wills or  
26 codicils;

27 (2)]<sup>1</sup> <sup>2</sup>[the “Uniform Commercial Code,” N.J.S.12A:1-101 et  
28 seq., other than N.J.S.12A:1-107, N.J.S.12A:1-206, the provisions  
29 of the “Uniform Commercial Code – Sales,” chapter 2 of Title 12A  
30 of the New Jersey Statutes, and the provisions of the “Uniform  
31 Commercial Code – Leases,” chapter 2A of Title 12A of the New  
32 Jersey Statutes; or

33 <sup>1</sup>[(3)] <sup>1</sup>(2)<sup>1</sup> a statute, regulation, or other rule of law governing  
34 adoption, divorce, or other matters of family law] a law governing  
35 the creation and execution of wills or codicils, except that  
36 subsections e., f., g., and h. of this section shall apply to notarial  
37 acts performed on a tangible record that is governed by a law  
38 governing the creation or execution of wills and codicils<sup>2</sup>.

39 c. A remotely located individual may comply with section <sup>1</sup>[18]  
40 <sup>2</sup>[16<sup>1</sup>] 18<sup>2</sup> of P.L. , c. (C. ) (pending before the Legislature  
41 as this bill) and subsections a. and b. of R.S.46:14-2.1 by using  
42 communication technology to appear before a notarial officer.

43 d. A notarial officer located in this State may perform a notarial  
44 act using communication technology for a remotely located  
45 individual if:

46 (1) the notarial officer:

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- 1 (a) has personal knowledge <sup>2</sup>pursuant to paragraph (1) of  
 2 subsection f. of section 17 of P.L. , c. (C. ) (pending before  
 3 the Legislature as this bill)<sup>2</sup> of the identity of the individual;
- 4 (b) has satisfactory evidence of the identity of the remotely  
 5 located individual by oath or affirmation from a credible witness  
 6 appearing before the notarial officer <sup>2</sup>pursuant to paragraph (2) of  
 7 subsection f. of section 17 of P.L. , c. (C. ) (pending before  
 8 the Legislature as this bill)<sup>2</sup> <sup>1</sup>or using communication technology  
 9 to appear before the notarial officer pursuant to this section<sup>1</sup>; or
- 10 (c) has obtained satisfactory evidence of the identity of the  
 11 remotely located individual by using at least two different types of  
 12 identity proofing;
- 13 (2) the notarial officer is able reasonably to confirm that a  
 14 record before the notarial officer <sup>1</sup>**[is]** <sup>1</sup>is the same record in which  
 15 the remotely located individual made a statement or on which the  
 16 remotely located individual executed a signature;
- 17 (3) the notarial officer, or a person acting on behalf of the  
 18 notarial officer, creates an audio-visual recording of the  
 19 performance of the notarial act; and
- 20 (4) for a remotely located individual who is located outside the  
 21 United States:
- 22 (a) the record:
- 23 (i) is to be filed with or relates to a matter before a public  
 24 official or court, governmental entity, or other entity subject to the  
 25 jurisdiction of the United States; or
- 26 (ii) involves property located in the territorial jurisdiction of the  
 27 United States or involves a transaction substantially connected with  
 28 the United States; and
- 29 (b) the act of making the statement or signing the record is not  
 30 prohibited by the foreign state in which the remotely located  
 31 individual is located.
- 32 e. <sup>2</sup>A notarial officer in this State may use communication  
 33 technology under subsection d. of this section to take an  
 34 acknowledgement of a signature on a tangible record that is in the  
 35 possession of the notary public if the record is displayed to and  
 36 identified by the remotely located individual during the audio-visual  
 37 session required by paragraph (3) of subsection d. of this section.
- 38 f. A notarial officer's obligation under paragraph (2) of  
 39 subsection d. of this section for the performance of a notarial act  
 40 with respect to a tangible record not physically present before the  
 41 notarial officer is satisfied if:
- 42 (1) the remotely located individual:
- 43 (a) during the audio-visual session required by paragraph (3) of  
 44 subsection d. of this section, signs:
- 45 (i) the record; and
- 46 (ii) a declaration, substantially in the following form, which is  
 47 part of or securely attached to the record:

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1 “I declare under penalty of perjury that the record to which this  
 2 declaration is attached is the same record on which [name of  
 3 notarial officer] performed a notarial act and before whom I  
 4 appeared by means of communication technology on [date].

5 \_\_\_\_\_ Printed name of remotely located  
 6 individual  
 7 \_\_\_\_\_ Signature of remotely located  
 8 individual”; and

9 (b) sends the record and declaration to the notarial officer not  
 10 later than three days after the notarial act was performed; and

11 (2) the notarial officer:

12 (a) in the audio-visual recording required by paragraph (3) of  
 13 subsection d. of this section, records the individual signing the  
 14 record and declaration; and

15 (b) after receipt of the record and declaration from the  
 16 individual, executes the certificate of notarial act required by  
 17 section 13 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) pending before the  
 18 Legislature as this bill), which must include the following statement  
 19 or words of similar import:

20 “I [name of notarial officer] witnessed, by means of  
 21 communication technology, [name of remotely located individual]  
 22 sign the attached record and declaration on [date]”.

23 g. A notarial act performed in compliance with subsection f. of  
 24 this section complies with paragraph (1) of subsection a. of section  
 25 13 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) pending before the Legislature as this  
 26 bill) and is effective as of the date on which the declaration was  
 27 signed by the remotely located individual.

28 h. Subsections f. and g. of this section are not intended to  
 29 exclude other procedures to satisfy the requirements of this section  
 30 for a notarial act performed with respect to a tangible record.

31 i. A notarial officer in this State may administer an oath to a  
 32 remotely located individual using communication technology.  
 33 Except as required or permitted by rule or law of this State, the  
 34 notarial officer shall identify the individual under paragraph (1) of  
 35 subsection d. of this section, create an audio-visual recording under  
 36 paragraph (3) of subsection d. of this section of the individual  
 37 taking the oath, and preserve a copy of the audio-visual recording  
 38 under subsection l. of this section.<sup>2</sup>

39 <sup>2</sup>[e.] j.<sup>2</sup> If a notarial act is performed under this section, the  
 40 certificate of notarial act required by section 10 of P.L.1979, c.460  
 41 (C.52:7-19), the certificate required by section c. of R.S.46:14-2.1,  
 42 or the short-form certificate provided in section <sup>1</sup>[21] <sup>2</sup>[19'] 21<sup>2</sup>  
 43 of P.L. \_\_\_\_\_, c. \_\_\_\_\_ (C. \_\_\_\_\_) (pending before the Legislature as this bill)  
 44 must indicate that the notarial act was performed using  
 45 communication technology.

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1 <sup>2</sup>[f.] k.<sup>2</sup> A short-form certificate provided in section <sup>1</sup>[21]  
 2 <sup>2</sup>[19<sup>1</sup>] 21<sup>2</sup> of P.L. , c. (C. ) (pending before the Legislature  
 3 as this bill) for a notarial act subject to this section is sufficient if it:

4 (1) complies with any rules or regulations adopted by <sup>2</sup>[1, or  
 5 provision published by,<sup>1</sup>]<sup>2</sup> the State Treasurer under paragraph (1)  
 6 of subsection <sup>2</sup>[j.] o.<sup>2</sup> of this section or section <sup>1</sup>[29] <sup>2</sup>[27<sup>1</sup>] 29<sup>2</sup>  
 7 of P.L. , c. (C. ) (pending before the Legislature as  
 8 this bill); or

9 (2) is in the form provided by section <sup>1</sup>[21] <sup>2</sup>[19<sup>1</sup>] 21<sup>2</sup> of  
 10 P.L. , c. (C. ) (pending before the Legislature as this bill)  
 11 and contains a statement substantially as follows: “This notarial act  
 12 involved the use of communication technology.”

13 <sup>2</sup>[g.] l.<sup>2</sup> A notarial officer, a guardian, conservator, or agent  
 14 of a notarial officer, or a personal representative of a deceased  
 15 notarial officer, shall retain the audio-visual recording created under  
 16 paragraph (3) of subsection d. of this section or cause the recording  
 17 to be retained by a repository designated by or on behalf of the  
 18 person required to retain the recording. Unless a different period is  
 19 required by any rule or regulation adopted by the State Treasurer  
 20 <sup>2</sup>[or any provision published by the State Treasurer,<sup>1</sup>]<sup>2</sup> under  
 21 paragraph (4) of subsection <sup>2</sup>[j.] o.<sup>2</sup> of this section, the recording  
 22 must be retained for a period of at least 10 years after the recording  
 23 is made.

24 <sup>2</sup>[h.] m.<sup>2</sup> Before a notary public performs <sup>1</sup>[his] the notary  
 25 public’s<sup>1</sup> initial notarial act under this section, the notary public  
 26 must notify the State Treasurer that the notary public will be  
 27 performing such notarial acts and identify the technologies the  
 28 notary public intends to use.

29 <sup>2</sup>[i.] n.<sup>2</sup> If the State Treasurer has established standards under  
 30 subsection <sup>2</sup>[j.] i.<sup>2</sup> of this section and section <sup>1</sup>[29] <sup>2</sup>[27<sup>1</sup>] 29<sup>2</sup> of  
 31 P.L. , c. (C. ) (pending before the Legislature as this bill)  
 32 for approval of communication technology or identity proofing, the  
 33 communication technology and identity proofing must conform to  
 34 those standards.

35 <sup>2</sup>[j.] o.<sup>2</sup> <sup>1</sup>[In addition to adopting rules and regulations  
 36 pursuant to the “Administrative Procedure Act,” P.L.1968, c.410  
 37 (C.52:14B-1 et seq.) under section 29 of P.L. , c. (C. )  
 38 (pending before the Legislature as this bill), the State Treasurer may  
 39 adopt rules and regulations pursuant to the “Administrative  
 40 Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) under this  
 41 section regarding the performance of a notarial act. The rules and  
 42 regulations may] <sup>2</sup>[The Treasurer may also publish provisions in  
 43 the New Jersey Public Notary Manual that<sup>1</sup>] In addition to adopting  
 44 rules and regulations pursuant to the “Administrative Procedure  
 45 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.) under section 29 of  
 46 P.L. , c. (C. ) (pending before the Legislature as this bill),

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22

1 the State Treasurer may adopt rules and regulations pursuant to the  
 2 “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et  
 3 seq.) under this section regarding the performance of a notarial act.

4 The rules and regulations may<sup>2</sup>:

5 (1) prescribe the means of performing a notarial act involving a  
 6 remotely located individual using communication technology;

7 (2) establish standards for communication technology and  
 8 identity proofing;

9 (3) establish requirements or procedures to approve providers of  
 10 communication technology and the process of identity proofing;

11 <sup>2</sup>[and]<sup>2</sup>

12 (4) establish standards and a period for the retention of an  
 13 audio-visual recording created under paragraph (3) of subsection d.  
 14 of this section<sup>2</sup>; and

15 (5) prescribe methods for confirmation of a tangible record by a  
 16 notarial officer permitted under subsection e. of this section<sup>2</sup>.

17 <sup>2</sup>[k.] p.<sup>2</sup> Before adopting, amending, or repealing a rule or  
 18 regulation <sup>2</sup>[or publishing a provision in the New Jersey Notary  
 19 Public Manual<sup>1</sup>]<sup>2</sup> governing performance of a notarial act with  
 20 respect to a remotely located individual, the State Treasurer must  
 21 consider:

22 (1) the most recent standards regarding the performance of a  
 23 notarial act with respect to a remotely located individual  
 24 promulgated by national standard-setting organizations such as the  
 25 Mortgage Industry Standards Maintenance Organization and the  
 26 recommendations of the National Association of Secretaries of  
 27 State;

28 (2) standards, practices, and customs of other jurisdictions that  
 29 have laws substantially similar to this section; and

30 (3) the views of governmental officials and entities and other  
 31 interested persons.

32 <sup>2</sup>q. (1) A notarial officer may perform a notarial act using  
 33 communication technology for a remotely located individual that  
 34 meets the requirements of section 19 of P.L. , c. (C. )  
 35 (pending before the Legislature as this bill) and subsections a. and  
 36 b. of R.S.46:14-2.1 regardless of whether the remotely located  
 37 individual is physically located in this State.

38 (2) A notarial act performed using communication technology  
 39 for a remotely located individual is deemed performed in New  
 40 Jersey and is governed by New Jersey law.

41 r. It is the intent of the Legislature that, to the fullest extent  
 42 allowed by the Full Faith and Credit Clause of the United States  
 43 Constitution and the laws of the 50 states and the District of  
 44 Columbia, a notarial act performed in this State shall be recognized,  
 45 be enforceable, and have the same effect under the law of the 50  
 46 states as if performed by a notarial officer of those jurisdictions.

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1 s. By allowing its communication technology or identity  
 2 proofing to facilitate a notarial act for a remotely located individual  
 3 or by providing storage of the audio-visual recording created under  
 4 paragraph (3) of subsection d. of this section, the provider of the  
 5 communication technology, identity proofing, or storage appoints  
 6 the State Treasurer as the provider's agent for service of process in  
 7 any civil action in this State related to the notarial act.<sup>2</sup>

8  
 9 <sup>1</sup>[20.]<sup>2</sup>[18.]<sup>1</sup> 20.<sup>2</sup> (New section) Signature if Individual  
 10 Unable to Sign.

11 If an individual is physically unable to sign a record, the  
 12 individual may direct an individual other than the notarial officer to  
 13 sign the record with the individual's name. The notarial officer shall  
 14 insert "Signature affixed by (name of other individual) at the  
 15 direction of (name of individual)" or words of similar import.

16  
 17 <sup>1</sup>[21.]<sup>2</sup>[19.]<sup>1</sup> 21.<sup>2</sup> (New section) Certificate Form.

18 The following short form certificates of notarial acts are  
 19 sufficient for the purposes indicated, if the requirements of section  
 20 10 of P.L.1979, c.460 (C.52:7-19) are satisfied. Certificates of  
 21 notarial acts are deemed sufficient for the purposes indicated if  
 22 substantially all of the requirements of section 10 of P.L.1979,  
 23 c.460 (C.52:7-19) and this section are satisfied:

24  
 25 a. For an acknowledgment in an individual capacity:  
 26 State of \_\_\_\_\_  
 27 County of \_\_\_\_\_  
 28 This record was acknowledged before me on \_\_\_\_\_ (date) by  
 29 \_\_\_\_\_  
 30 (Name(s) of individual(s))  
 31 \_\_\_\_\_  
 32 Signature of notarial officer  
 33  
 34 Stamp  
 35 \_\_\_\_\_  
 36 Title of office  
 37 (My commission expires: \_\_\_\_\_)

38  
 39 b. For an acknowledgment in a representative capacity:  
 40 State of \_\_\_\_\_  
 41 County of \_\_\_\_\_  
 42 This record was acknowledged before me on \_\_\_\_\_ (date) by  
 43 \_\_\_\_\_  
 44 (Name(s) of individual(s))  
 45 as (type of authority, such as officer or trustee) of (name of party on  
 46 behalf of whom record was executed).  
 47 \_\_\_\_\_

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1 Signature of notarial officer  
2  
3 Stamp  
4 \_\_\_\_\_  
5 Title of office  
6  
7 (My commission expires: \_\_\_\_\_)  
8  
9 c. For a verification on oath or affirmation:  
10 State of \_\_\_\_\_  
11 County of \_\_\_\_\_  
12 Signed and sworn to (or affirmed) before me on \_\_\_\_\_ (date) by  
13 \_\_\_\_\_  
14 (Name(s) of individual(s) making statement)  
15  
16 \_\_\_\_\_  
17 Signature of notarial officer  
18  
19 Stamp  
20  
21 [ \_\_\_\_\_ ]  
22 Title of office  
23  
24 (My commission expires: \_\_\_\_\_)  
25  
26 d. For witnessing or attesting a signature:  
27 State of \_\_\_\_\_  
28 County of \_\_\_\_\_  
29 Signed (or attested) before me on \_\_\_\_\_ (date) by  
30 \_\_\_\_\_  
31 (Name(s) of individual(s))  
32  
33 \_\_\_\_\_  
34 Signature of notarial officer  
35  
36 Stamp  
37 [ \_\_\_\_\_ ]  
38 Title of office  
39  
40 (My commission expires: \_\_\_\_\_)  
41  
42 e. For certifying a copy of a record:  
43 State of \_\_\_\_\_  
44 County of \_\_\_\_\_  
45 I certify that this is a true and correct copy of a record in the  
46 possession of \_\_\_\_\_ (name).  
47  
48 Dated \_\_\_\_\_



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25

1 \_\_\_\_\_

2

3 Signature of notarial officer

4

5 Stamp

6

7 \_\_\_\_\_

7 Title of office

8

9 (My commission expires: \_\_\_\_\_ )

10

11 <sup>1</sup>[22.] <sup>2</sup>[20.1] 22.<sup>2</sup> (New section) Notarial Act in this  
12 State.13 a. The signature and title of an individual performing a notarial  
14 act are prima facie evidence that the signature is genuine and that  
15 the individual holds the designated title.16 b. A notarial act may be performed in this State by an  
17 individual authorized by the applicable law to perform the notarial  
18 act.19 c. The signature and title of a notarial officer authorized by the  
20 applicable law to perform the notarial act conclusively establishes  
21 the authority of the officer to perform the notarial act.

22

23 <sup>1</sup>[23.] <sup>2</sup>[21.1] 23.<sup>2</sup> (New section) Notarial Acts Outside this  
24 State.

25 a. In Another State.

26 (1) A notarial act performed in another state has the same effect  
27 under the law of this State as if performed by a notarial officer of  
28 this State, if the act performed in that state is performed by:

29 (a) a notary public of that state;

30 (b) a judge, clerk, or deputy clerk of <sup>1</sup>a court of<sup>1</sup> that state; or31 (c) any other individual authorized by the law of that state to  
32 perform the notarial act.33 (2) The signature and title of an individual performing a notarial  
34 act in another state are prima facie evidence that the signature is  
35 genuine and that the individual holds the designated title.36 (3) The signature and title of a notarial officer described in  
37 subparagraph (a) or (b) of paragraph (1) of this subsection  
38 conclusively establish the authority of the officer to perform the  
39 notarial act.

40 b. Under Authority of Federally Recognized Indian Tribe.

41 (1) A notarial act performed under the authority and in the  
42 jurisdiction of a federally recognized Indian tribe has the same  
43 effect as if performed by a notarial officer of this State, if the act  
44 performed in the jurisdiction of the tribe is performed by:

45 (a) a notary public of the tribe;

46 (b) a judge, clerk, or deputy clerk of a court of the tribe; or

47 (c) any other individual authorized by the law of the tribe to  
48 perform the notarial act.

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1 (2) The signature and title of an individual performing a notarial  
2 act under the authority of and in the jurisdiction of a federally  
3 recognized Indian tribe are prima facie evidence that the signature  
4 is genuine and that the individual holds the designated title.

5 (3) The signature and title of a notarial officer described in  
6 subparagraph (a) or (b) of paragraph (1) of this subsection  
7 conclusively establish the authority of the officer to perform the  
8 notarial act.

9 c. Under Federal Authority.

10 (1) A notarial act performed under federal law has the same  
11 effect under the law of this State as if performed by a notarial  
12 officer of this State, if the <sup>2</sup>act<sup>2</sup> performed under federal law is  
13 performed by:

14 (a) a judge, clerk, or deputy clerk of a court;

15 (b) an individual in military service or performing duties under  
16 the authority of military service who is authorized to perform  
17 notarial acts under federal law;

18 (c) an individual designated a notarizing officer by the United  
19 States Department of State for performing notarial acts overseas; or

20 (d) any other individual authorized by federal law to perform the  
21 notarial act.

22 (2) The signature and title of an individual acting under federal  
23 authority and performing a notarial act are prima facie evidence that  
24 the signature is genuine and that the individual holds the designated  
25 title.

26 (3) The signature and title of an officer described in  
27 subparagraph (a), (b), or (c) of paragraph (1) of this subsection  
28 conclusively establish the authority of the officer to perform the  
29 notarial act.

30 d. Foreign Notarial Acts.

31 (1) As used in this subsection, “foreign state” means a  
32 jurisdiction other than the United States, a state, or a federally  
33 recognized Indian tribe.

34 (2) If a notarial act is performed under authority and in the  
35 jurisdiction of a foreign state or constituent unit of the foreign state  
36 or is performed under the authority of a multinational or  
37 international governmental organization, the act has the same effect  
38 under the law of this State as if performed by a notarial officer of  
39 this State.

40 (3) If the title of office and indication of authority to perform  
41 notarial acts in a foreign state appears in a digest of foreign law or  
42 in a list customarily used as a source for that information, the  
43 authority of an officer with that title to perform notarial acts is  
44 conclusively established.

45 (4) The signature and official stamp of an individual holding an  
46 office described in paragraph (3) of this subsection are prima facie  
47 evidence that the signature is genuine and the individual holds the  
48 designated title.

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1 (5) An apostille in the form prescribed by the Hague Convention  
 2 of October 5, 1961 and issued by a foreign state party to the Hague  
 3 Convention conclusively establishes that the signature of the  
 4 notarial officer is genuine and that the notarial officer holds the  
 5 indicated office.

6 (6) A consular authentication issued by an individual designated  
 7 by the United States Department of State as a notarizing officer for  
 8 performing notarial acts overseas and attached to the record with  
 9 respect to which the notarial act is performed conclusively  
 10 establishes that the signature of the notarial officer is genuine and  
 11 that the notarial officer holds the indicated office.

12  
 13 <sup>1</sup>[24.] <sup>2</sup>[22.1] 24.<sup>2</sup> (New section) Notification Regarding  
 14 Performance of Notarial Act on Electronic Record; Selection of  
 15 Technology; Acceptance of Tangible Copy of Electronic Record.

16 a. A notarial officer may select one or more tamper-evident  
 17 technologies to perform notarial acts with respect to electronic  
 18 records. A person may not require a notarial officer to perform a  
 19 notarial act with respect to an electronic record with a technology  
 20 that the notarial officer has not selected.

21 b. Before a <sup>1</sup>[notarial officer] notary public<sup>1</sup> performs <sup>1</sup>[his]  
 22 the notary public's<sup>1</sup> initial notarial act with respect to an electronic  
 23 record, the <sup>1</sup>[notarial officer] notary public<sup>1</sup> shall notify the State  
 24 Treasurer that <sup>1</sup>[he] the notary public<sup>1</sup> will be performing notarial  
 25 acts with respect to electronic records and identify the technology  
 26 that the <sup>1</sup>[notarial officer] notary public<sup>1</sup> intends to use. If the  
 27 State Treasurer has established standards for approval of technology  
 28 pursuant to section <sup>1</sup>[29] <sup>2</sup>[27.1] 29<sup>2</sup> of P.L. , c. (C. )  
 29 (pending before the Legislature as this bill), the technology must  
 30 conform to those standards. If the technology conforms to the  
 31 standards, the State Treasurer shall approve the use of the  
 32 technology.

33 c. A county clerk <sup>2</sup>[or] <sup>2</sup>[a] register of deeds and mortgages<sup>2</sup>,  
 34 and a county surrogate<sup>2</sup> <sup>1</sup>[may] shall<sup>1</sup> accept for recording a  
 35 tangible copy of an electronic record containing a notarial  
 36 certificate as satisfying any requirement that a record accepted for  
 37 recording be an original, if the notarial officer executing the notarial  
 38 certificate certifies that the tangible copy is an accurate copy of the  
 39 electronic record.

40  
 41 <sup>1</sup>[25.] <sup>2</sup>[23.1] 25.<sup>2</sup> (New section) Database of Notaries Public.

42 The State Treasurer shall maintain an electronic database of  
 43 current and former notaries public, including the dates that the  
 44 notary public was commissioned and authorized to perform notarial  
 45 acts:

46 a. through which a person may verify the authority of a notary  
 47 public to perform notarial acts; and

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28

1 b. which indicates whether a notary public has notified the  
 2 State Treasurer that the notary public will be performing notarial  
 3 acts on electronic records.

4

5 <sup>1</sup>[26.] <sup>2</sup>[24.1] 26.<sup>2</sup> (New section) Authority to Refuse to  
 6 Perform Notarial Act.

7 a. A notarial officer may refuse to perform a notarial act if the  
 8 officer is not satisfied that:

9 (1) the individual executing the record is competent or has the  
 10 capacity to execute the record;

11 (2) the individual's signature is knowingly and voluntarily  
 12 made;

13 (3) the individual's signature on the record or statement  
 14 substantially conforms to the signature on a form of identification  
 15 used to determine the identity of the individual; or

16 (4) the physical appearance of the individual signing the record  
 17 or statement substantially conforms to the photograph on a form of  
 18 identification used to determine the identity of the individual.

19 b. A notarial officer may refuse to perform a notarial act unless  
 20 refusal is prohibited by law other than P.L.1979, c.460 (C.52:7-  
 21 10 et seq.), as amended and supplemented by P.L. , c. (C. )  
 22 (pending before the Legislature as this bill).

23

24 <sup>1</sup>[27.] <sup>2</sup>[25.1] 27.<sup>2</sup> (New section) Journal.

25 a. A notary public shall maintain a journal of all notarial acts  
 26 performed.

27 (1) The journal may be created and maintained on a tangible  
 28 medium or in an electronic format.

29 (2) A notary public shall maintain only one journal at a time to  
 30 chronicle all notarial acts, whether those notarial acts are performed  
 31 regarding tangible or electronic records.

32 (3) If the journal is maintained on a tangible medium, it shall be  
 33 a permanent, bound register with consecutively numbered lines and  
 34 consecutively numbered pages.

35 (4) If the journal is maintained in an electronic format, it shall  
 36 be in a permanent, tamper-evident electronic format complying with  
 37 any <sup>1</sup>[rules and regulations promulgated] <sup>2</sup>[standards published<sup>1</sup>]  
 38 rules and regulations promulgated<sup>2</sup> by the State Treasurer <sup>2</sup>[in the  
 39 New Jersey Notary Public Manual<sup>1</sup>]<sup>2</sup> .

40 b. For each notarial act, the notary public shall record in the  
 41 journal:

42 (1) the date and time of the notarial act;

43 (2) the type of notarial act, including but not limited to the  
 44 taking of an acknowledgment, the taking of a proof of a deed, the  
 45 administration of an oath, or the taking of an affidavit;

46 (3) the name and address of each person for whom the notarial  
 47 act is performed;

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- 1 (4) if the identity of the individual is based on personal  
2 knowledge, a statement to that effect;
- 3 (5) if the identity of the individual is based on satisfactory  
4 evidence, a brief description of the method of identification and the  
5 identification credential presented, if any, including, if applicable,  
6 the type, date of issuance, and date of expiration of an identification  
7 document, or the name and signature of any identifying witness and,  
8 if applicable, the type, date of issuance, and date of expiration of a  
9 document identifying the witness; and
- 10 (6) an itemized list of all fees charged for the notarial act.
- 11 c. If a notary public's journal is lost or stolen, the notary public  
12 shall notify the State Treasurer within 10 days of the loss or theft.
- 13 d. The notary public shall either:
- 14 (1) retain the journal for 10 years after the performance of the  
15 last notarial act chronicled in the journal; or
- 16 (2) transmit the journal to the Department of the Treasury,  
17 Division of Revenue and Enterprise Services, or a repository  
18 approved by the State Treasurer.
- 19 e. On resignation from, or the revocation or suspension of, a  
20 notary public's commission, the notary public shall either:
- 21 (1) retain the journal in accordance with paragraph (1) of  
22 subsection d. of this section and inform the State Treasurer where  
23 the journal is located; or
- 24 (2) transmit the journal to the Department of the Treasury,  
25 Division of Revenue and Enterprise Services, or a repository  
26 approved by the State Treasurer.
- 27 f. On the death or adjudication of incompetency of a current or  
28 former notary public, the notary public's personal representative or  
29 guardian or any other person knowingly in possession of the journal  
30 shall, within 45 days, transmit it to the Department of the Treasury,  
31 Division of Revenue and Enterprise Services, or a repository  
32 approved by the State Treasurer.
- 33 g. In lieu of maintaining a journal, a notary public who is an  
34 attorney-at-law admitted to practice in this State, or who is  
35 employed by an attorney-at-law, or who is employed by or acting as  
36 an agent for a title insurance company licensed to do business in  
37 this State pursuant to P.L.2001, c.210 (C.17:22A-26 et seq.), may  
38 maintain a record of notarial acts in the form of files regularly  
39 maintained for the attorney's law practice or the title insurance  
40 company's business activities, as the case may be.

41

42 <sup>1</sup>[28.] <sup>2</sup>[26.] <sup>1</sup>28.<sup>2</sup> (New section) Validity of Notarial  
43 Acts.

- 44 a. Except as otherwise provided in section 9 of P.L. ,  
45 c. (C. ) (pending before the Legislature as this bill), the  
46 failure of a notarial officer to perform a duty or meet a requirement  
47 specified in P.L.1979, c.460 (C.52:7-10 et seq.), as amended and  
48 supplemented by P.L. , c. (C. ) (pending before the

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1 Legislature as this bill), does not invalidate a notarial act performed  
2 by the notarial officer.

3 b. The validity of a notarial act under P.L.1979, c.460 (C.52:7-  
4 10 et seq.), as amended and supplemented by P.L. ,

5 c. (C. ) (pending before the Legislature as this bill), does not  
6 prevent an aggrieved person from seeking to invalidate the record  
7 or transaction that is the subject of the notarial act or from seeking  
8 other remedies available by law and as provided in P.L.1979, c.460  
9 (C.52:7-10 et seq.), as amended and supplemented by  
10 P.L. , c. (C. ) (pending before the Legislature as this bill).

11 c. P.L.1979, c.460 (C.52:7-10 et seq.), as amended and  
12 supplemented by P.L. , c. (C. ) (pending before the  
13 Legislature as this bill), shall not validate any purported notarial act  
14 performed by an individual who does not have the authority to  
15 perform notarial acts.

16

17 <sup>1</sup>[29.] <sup>2</sup>[27. <sup>1</sup> 29.]<sup>2</sup> (New section) Rules and Regulations.

18 a. The State Treasurer <sup>1</sup>[shall] <sup>2</sup>[may] <sup>1</sup> shall<sup>2</sup> adopt rules and  
19 regulations pursuant to the “Administrative Procedure Act,”  
20 P.L.1968, c.410 (C.52:14B-1 et seq.) <sup>2</sup>[or publish procedures and  
21 standards in the New Jersey Notary Public Manual]<sup>1</sup><sup>2</sup> to implement  
22 the provisions of P.L.1979, c.460 (C.52:7-10 et seq.), as amended  
23 and supplemented by P.L. , c. (C. ) (pending before the  
24 Legislature as this bill). Any rules and regulations <sup>2</sup>[or procedures  
25 and standards]<sup>1</sup><sup>2</sup> regarding the performance of notarial acts with  
26 respect to electronic records shall not require, or accord greater  
27 legal status or effect to, the implementation or application of a  
28 specific technology or technical specification. The rules and  
29 regulations <sup>2</sup>[or procedures and standards]<sup>1</sup><sup>2</sup> may:

30 (1) prescribe the manner of performing notarial acts regarding  
31 tangible and electronic records;

32 (2) include provisions to ensure that any change to or tampering  
33 with a record bearing a certificate of a notarial act is self-evident;

34 (3) include provisions to ensure integrity in the creation,  
35 transmittal, storage, or authentication of electronic records or  
36 signatures;

37 (4) prescribe the process of granting, renewing, conditioning,  
38 denying, suspending, revoking, or otherwise limiting a notary  
39 public commission and assuring the trustworthiness of an individual  
40 holding a commission as notary public; <sup>2</sup>[and]<sup>1</sup><sup>2</sup>

41 (5) include provisions to prevent fraud or mistake in the  
42 performance of notarial acts<sup>1</sup>; and

43 (6) provide for the administration of the examination under  
44 section 7 of P.L. , c. (C. ) (pending before the Legislature  
45 as this bill) and the course of study under section 6 of P.L. ,

46 c. (C. ) (pending before the Legislature as this bill)]<sup>1</sup> <sup>2</sup>;  
47 and

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1 (6) provide for the administration of the examination under  
 2 section 7 of P.L. , c. (C. ) (pending before the Legislature  
 3 as this bill) and the course of study under section 6 of P.L. , c.  
 4 (C. ) (pending before the Legislature as this bill)<sup>2</sup>.

5 b. In adopting, amending, or repealing rules and regulations  
 6 <sup>2</sup>[<sup>1</sup>or publishing procedures and standards<sup>1</sup>]<sup>2</sup> concerning notarial  
 7 acts with respect to electronic records, the State Treasurer shall  
 8 consider, consistent with the provisions of P.L.1979, c.460 (C.52:7-  
 9 10 et seq.), as amended and supplemented by  
 10 P.L. , c. (C. ) (pending before the Legislature as this bill):

11 (1) the most recent standards regarding electronic records  
 12 promulgated by national bodies, such as the Mortgage Industry  
 13 Standards Maintenance Organization and the National Association  
 14 of Secretaries of State;

15 (2) standards, practices, and customs of other jurisdictions that  
 16 substantially enact the Revised Uniform Law on Notarial Acts, as  
 17 embodied in P.L.1979, c.460 (C.52:7-10 et seq.), as amended and  
 18 supplemented by P.L. , c. (C. ) (pending before the  
 19 Legislature as this bill); and

20 (3) the views of governmental officials and entities and other  
 21 interested persons.

22  
 23 <sup>1</sup>[30.] <sup>2</sup>[28.<sup>1</sup>] 30.<sup>2</sup> R.S.46:14-2.1 is amended to read as  
 24 follows:

25 46:14-2.1. Acknowledgment and proof.

26 a. To acknowledge a deed or other instrument the maker of the  
 27 instrument shall appear before an officer specified in R.S.46:14-6.1  
 28 <sup>2</sup>or use communication technology to appear before the officer  
 29 pursuant to section 19 of P.L. , c. (C. ) (pending before the  
 30 Legislature as this bill)<sup>2</sup> and acknowledge that it was executed as  
 31 the maker's own act. To acknowledge a deed or other instrument  
 32 made on behalf of a corporation or other entity, the maker shall  
 33 appear before an officer specified in R.S.46:14-6.1 and state that the  
 34 maker was authorized to execute the instrument on behalf of the  
 35 entity and that the maker executed the instrument as the act of the  
 36 entity.

37 b. To prove a deed or other instrument, a subscribing witness  
 38 shall appear before an officer specified in R.S.46:14-6.1 <sup>1</sup>or use  
 39 communication technology to appear before the officer pursuant to  
 40 section <sup>2</sup>[17] 19<sup>2</sup> of P.L. , c. (C. ) (pending before the  
 41 Legislature as this bill)<sup>1</sup> and swear that he or she witnessed the  
 42 maker of the instrument execute the instrument as the maker's own  
 43 act. To prove a deed or other instrument executed on behalf of a  
 44 corporation or other entity, a subscribing witness shall appear  
 45 before an officer specified in R.S.46:14-6.1 <sup>1</sup>or use communication  
 46 technology to appear before the officer pursuant to section <sup>2</sup>[17]  
 47 19<sup>2</sup> of P.L. , c. (C. ) (pending before the Legislature as this

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1 bill)<sup>1</sup> and swear that the representative was authorized to execute  
 2 the instrument on behalf of the entity, and that he or she witnessed  
 3 the representative execute the instrument as the act of the entity.

4 c. The officer taking an acknowledgment or proof shall sign a  
 5 certificate stating that acknowledgment or proof. The certificate  
 6 shall also state:

7 (1) that the maker or the witness personally appeared before the  
 8 officer <sup>2</sup>or used communication technology to appear before the  
 9 officer pursuant to section 17 of P.L. , c. (C. ) (pending  
 10 before the Legislature as this bill)<sup>1</sup><sup>2</sup>;

11 (2) that the officer was satisfied that the person who made the  
 12 acknowledgment or proof was the maker of or the witness to the  
 13 instrument;

14 (3) the jurisdiction in which the acknowledgment or proof was  
 15 taken;

16 (4) the officer's name and title;

17 (5) the date on which the acknowledgment was taken.

18 d. The seal of the officer taking the acknowledgment or proof  
 19 need not be affixed to the certificate stating that acknowledgment or  
 20 proof.

21 e. A <sup>2</sup>[short form]<sup>2</sup> certificate that is substantially in the form  
 22 provided in <sup>2</sup>subsection b. of<sup>2</sup> section <sup>2</sup>[19] 13<sup>2</sup> of P.L. ,  
 23 c. (C. ) (pending before the Legislature as this bill) satisfies  
 24 the requirements of this section.

25 (cf: P.L.1991, c.308, s.1)

26

27 <sup>2</sup>[<sup>29</sup>.] 31.<sup>2</sup> R.S.46:14-6.1 is amended to read as follows:

28 46:14-6.1. Officers authorized to take acknowledgments. a. The  
 29 officers of this State authorized to take acknowledgments or proofs  
 30 in this State, or in any other United States or foreign jurisdiction,  
 31 are:

32 (1) an attorney-at-law;

33 (2) a notary public;

34 (3) a county clerk or deputy county clerk;

35 (4) a register of deeds and mortgages or a deputy register;

36 (5) a surrogate or deputy surrogate.

37 b. The officers authorized to take acknowledgments or proofs,  
 38 in addition to those listed in subsection a., are:

39 (1) any officer of the United States, of a state, territory or  
 40 district of the United States, or of a foreign nation authorized at the  
 41 time and place of the acknowledgment or proof by the laws of that  
 42 jurisdiction to take acknowledgments or proofs. If the certificate of  
 43 acknowledgment or proof does not designate the officer as a justice,  
 44 judge or notary, the certificate of acknowledgment or proof, or an  
 45 affidavit appended to it, shall contain a statement of the officer's  
 46 authority to take acknowledgments or proofs;



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1 (2) **【**a foreign commissioner of deeds for New Jersey within the  
2 jurisdiction of the commission;

3 (3)**】** a foreign service or consular officer or other representative  
4 of the United States to any foreign nation, within the territory of  
5 that nation.<sup>1</sup>

6 (cf: P.L.1991, c.308, s.1)

7

8 <sup>1</sup>**【**31.**】** <sup>2</sup>**【**30.<sup>1</sup>**】** 32.<sup>2</sup> N.J.S.22A:4-14 is amended to read as  
9 follows:

10 22A:4-14. For **【**a service specified in this section**】** administering  
11 oaths, taking affidavits, taking proofs of a deed, and taking  
12 acknowledgements, <sup>1</sup>**【**foreign commissioners of deeds,**】**<sup>1</sup> notaries  
13 public, judges and other officers authorized by law to perform such  
14 **【**service,**】** services shall receive a fee as **【**follows:

15 For administering an oath or taking an affidavit, \$2.50.

16 For taking proof of a deed, \$2.50.

17 For taking all acknowledgments, \$2.50.

18 For administering oaths, taking affidavits, taking proofs of a  
19 deed, and taking acknowledgments of the grantors in the transfer of  
20 real estate, regardless of the number of such services performed in a  
21 single transaction to transfer real estate, \$15.00.

22 For administering oaths, taking affidavits and taking  
23 acknowledgments of the mortgagors in the financing of real estate,  
24 regardless of the number of such services performed in a single  
25 transaction to finance real estate, \$25.00**】** shall be fixed by the State  
26 Treasurer by regulation.

27 (cf: P.L.2002, c.34, s.48)

28

29 <sup>1</sup>**【**32.**】** <sup>2</sup>**【**31.<sup>1</sup>**】** 33.<sup>2</sup> R.S.41:2-17 is amended to read as follows:

30 41:2-17. Officers authorized to administer or take; jurat;  
31 certificate,

32 Any oath, affirmation<sub>2</sub> or affidavit required or authorized to be  
33 taken in any suit or legal proceeding in this **【**state**】** State, or for any  
34 lawful purpose whatever, except official oaths and depositions  
35 required to be taken upon notice, when taken out of this **【**state**】**  
36 State, may be taken before any notary public of the state, territory,  
37 nation, kingdom<sub>2</sub> or country in which the same shall be taken, or  
38 before any officer who may be authorized by the laws of this  
39 **【**state**】** State to take the acknowledgment of deeds in such state,  
40 territory, nation, kingdom<sub>2</sub> or country; and a recital that he <sup>1</sup>or she<sup>1</sup>  
41 is such notary or officer in the jurat or certificate of such oath,  
42 affirmation<sub>2</sub> or affidavit, and his <sup>1</sup>or her<sup>1</sup> official designation  
43 annexed to his <sup>1</sup>or her<sup>1</sup> signature, and attested under his <sup>1</sup>or her<sup>1</sup>  
44 official seal, shall be sufficient proof that the person before whom  
45 the same is taken is such notary or officer. **【**When, however, any  
46 other certificate is required by law to be annexed to the certificate

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1 of such officer, other than a notary public, for the recording of a  
 2 deed acknowledged before him, a like certificate shall be annexed  
 3 to his certificate of the taking of such oath.】

4 (cf: R.S.41:2-17)

5  
 6 <sup>1</sup>【33.】 <sup>2</sup>【32.1】 <sup>3</sup>4.2 (New section) Relation to Electronic  
 7 Signatures in Global and National Commerce Act.

8 P.L. , c. (C. ) (pending before the Legislature as this bill)  
 9 modifies, limits, and supersedes the Electronic Signatures in Global  
 10 and National Commerce Act, 15 U.S.C. s.7001 et seq., but does not  
 11 modify, limit, or supersede section 101(c) of that act, 15 U.S.C.  
 12 7001(c), or authorize electronic delivery of any of the <sup>1</sup>【noties】  
 13 notices<sup>1</sup> described in section 103(b) of that act, 15 U.S.C. section  
 14 7003(b).

15  
 16 <sup>1</sup>【34.】 <sup>1</sup>【33.1】 <sup>2</sup>35.2 (New section) Savings Clause.

17 P.L.1979, c.460 (C.52:7-10 et seq.), as amended and  
 18 supplemented by P.L. , c. (C. ) (pending before the  
 19 Legislature as this bill), shall not affect the validity or effect of any  
 20 notarial act performed before the effective date of P.L. ,  
 21 c. (C. ) (pending before the Legislature as this bill).

22  
 23 <sup>2</sup>36. Section 3 of P.L.2001, c.116 (C.12A:12-3) is amended to  
 24 read as follows:

25 3. a. Except as provided in subsections b. and c. of this section,  
 26 this act applies to electronic records and electronic signatures  
 27 relating to a transaction.

28 b. This act does not apply to a transaction to the extent it is  
 29 governed by【:

30 (1)【 a law governing the creation and execution of wills, codicils  
 31 or testamentary trusts【;

32 (2) the Uniform Commercial Code other than sections 1-107 and  
 33 1-206, Article 2 and Article 2A;

34 (3) a statute, regulation or other rule of law governing adoption,  
 35 divorce or other matters of family law【.

36 c. This act does not apply to:

37 (1) court orders or notices or official court documents (including  
 38 briefs, pleadings and other writings) required to be executed in  
 39 connection with court proceedings;

40 (2) any notice of:

41 (a) the cancellation or termination of utility services (including  
 42 water, heat and power);

43 (b) the default, acceleration, repossession, foreclosure or  
 44 eviction, or the right to cure, under a credit agreement secured by,  
 45 or a rental agreement for, a primary residence of an individual;

46 (c) the cancellation or termination of health insurance benefits  
 47 or life insurance benefits (excluding annuities); or

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1 (d) the recall of a product, or material failure of a product, that  
2 risks endangering health or safety; or

3 (3) any document required to accompany any transportation or  
4 handling of hazardous materials, pesticides or other toxic or  
5 dangerous materials.

6 d. This act applies to an electronic record or electronic  
7 signature otherwise excluded from the application of this act under  
8 subsection b. of this section to the extent it is governed by a law  
9 other than those specified in subsection b. of this section.

10 e. A transaction subject to this act is subject also to other  
11 applicable substantive law. <sup>2</sup>

12 (cf: P.L.2001, c.116, s.3)

13

14 <sup>1</sup>[35.] <sup>2</sup>[34.] <sup>1</sup> 37.<sup>2</sup> The following are repealed:

15 <sup>2</sup>[<sup>1</sup>R.S.52:6-15 through R.S.52:6-22; <sup>1</sup>]<sup>2</sup>

16 <sup>2</sup>[Section 7 of P.L.1979, c.460 (C.52:7-16);]<sup>2</sup> <sup>2</sup>Section 7 of  
17 P.L.1979, c.460 (C.52:7-16);<sup>2</sup> and

18 Sections 1 and 2 of P.L.1981, c.487 (C.52:7-20 and C.52:7-21).

19

20 <sup>2</sup>38. (New section) Notwithstanding the provisions of the  
21 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
22 seq.) to the contrary, the State Treasurer shall adopt, after notice,  
23 interim rules and regulations as shall be necessary for the  
24 implementation of this act within 90 days after the effective date of  
25 this act. The rules and regulations shall be effective as regulations  
26 immediately upon filing with the Office of Administrative Law and  
27 shall be effective for a period not to exceed 18 months, and may,  
28 thereafter, be amended, adopted or readopted by the Treasurer in  
29 accordance with the provisions of the "Administrative Procedure  
30 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).<sup>2</sup>

31

32 <sup>1</sup>[36.] <sup>2</sup>[35.] <sup>1</sup> 39.<sup>2</sup> <sup>2</sup>[This] Sections 6 and 7 of this<sup>2</sup> act shall  
33 take effect on the <sup>2</sup>365<sup>th</sup> day following enactment. Sections 1  
34 through 5 and sections 8 through 38 of this act shall take effect on  
35 the<sup>2</sup> <sup>1</sup>[180<sup>th</sup>] 90<sup>th</sup><sup>1</sup> day following enactment <sup>2</sup>[<sup>1</sup>except the] . The  
36 State<sup>2</sup> Treasurer may take any anticipatory administrative action in  
37 advance as shall be necessary for the implementation of this act<sup>1</sup>.

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### About the Panelists...

**Dana A. Bennett** is a Partner in Bennett & Wyatt, LLC with offices in Red Bank and Lakewood, New Jersey. She devotes her practice to estate planning, probate and estate administration, estate and gift tax matters, income tax planning for trusts and estates, and charitable planning.

Admitted to practice in New Jersey and New York, Ms. Bennett is a Fellow of the American College of Trust and Estate Counsel (ACTEC) and has been Vice Chair of the Board of Consultors of the Real Property, Trust and Estate Law Section of the New Jersey State Bar Association. She has been a Trustee and Chair of the Monmouth Bar Association's Probate and Administration Committee and a member of the American and New York State Bar Associations. She is Past President and has been a member of the Estate and Financial Planning Council of Central New Jersey.

Ms. Bennett received her B.A., *cum laude*, from Villanova University, her J.D. from Seton Hall University School of Law and her LL.M. in Taxation from New York University

**Kevin R. Centurrino** is an associate with Berkowitz, Lichtstein, Kuritsky, Giasullo & Gross, LLC in Roseland, New Jersey, where he concentrates his practice in estate planning, estate administration and Medicaid planning.

Admitted to practice in New Jersey, New York and Pennsylvania, and before the United States District Court for the District of New Jersey, Mr. Centurrino has been a member of the Estate Planning Council of Northern New Jersey and the New Jersey State and Morris County Bar Associations. He has lectured for ICLE and the New York City Bar Association, and has authored numerous articles for the *New Jersey Law Journal*, including "Warning: 529 Accounts May Be Subject to NJ Inheritance Tax" and "Taking Advantage of FDIC Insurance Loopholes Could Impede Your Estate Plan."

Mr. Centurrino received his B.A. from Moravian College and his J. D. from Widener University School of Law, where he was a member of the Moot Court Honor Society.

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