WEST VIRGINIA CODE CHAPTER 39

WV Legislature

§39-1-1. Power of attorney may be recorded.

A power of attorney may be admitted to record in any county.

WV Legislature

§39-1-2. Conditions under which county clerk shall admit deeds, contacts, etc., to record.

(a) The clerk of the county commission of any county in which any deed, contract, power of attorney, or other writing is to be, or may be, recorded, shall admit the same to record in the clerk's office, as to any person whose name is signed thereto, when it shall have been acknowledged by such person or proved by two witnesses as to such person before such clerk of the county commission.

(b) Notwithstanding the requirements of subsection (a) of this section:

(1) The clerk shall not admit to record any contract, deed, deed of trust, mortgage, or other instrument that secures the payment of any debt, unless such contract, deed, deed of trust, mortgage, or other instrument sets forth therein who, at the time of the execution and delivery thereof, is the beneficial owner of the debt secured thereby, and where he resides: *Provided*, That in the case of a mortgage or a deed of trust securing an issue of negotiable notes or bonds exceeding five in number and payable to bearer, it shall not be necessary that the mortgage or deed of trust show who are the beneficial owners of such notes or bonds, but in such case such mortgage or deed of trust shall show the name and address of the person or corporation with or by whom the notes or bonds have been, or are to be, first negotiated.

(2) The clerk shall not admit to record any quitclaim deed without consideration or any deed effecting the transfer of real property where the value of the property transferred is $100 or less for which no excise tax on the privilege of transferring real property on such instrument is paid under §11-22-1 *et seq*. of this code unless the instrument has been signed by the grantee thereon and acknowledged by the grantee or proved by two witnesses as to the grantee before such clerk of the county commission: *Provided*, That the clerk shall admit to record any transfer on death deed made pursuant to §39-12-1 *et seq*. of this code, and transfers between husband and wife, transfers between parent and child, transfers between parent and child and his or her spouse, transfers between grandparent and grandchild, or transfers between grandparent and grandchild and his or her spouse, which are without consideration or for consideration of less than $2,000, that have not been signed by the grantee thereon. Any deed recorded in violation of this section is void and no interest transfers to grantee under such recorded deed.

WV Legislature

§39-1-2a. Other requirements for admission to record of certain instruments.

(a) In addition to the other requirements prescribed by law, no instrument by which the title to real estate or personal property, or any interest therein or lien thereon, is conveyed, created, encumbered, assigned or otherwise disposed of, shall be recorded or admitted to record, or filed by the county clerk unless the name of the person who, and governmental agency, if any, which, prepared such instrument appears at the conclusion of such instrument and such name is either printed, typewritten, stamped, or signed in a legible manner: Provided, That the recording or filing of any instrument in violation of the provisions of this section shall not invalidate or cloud the title passing by or under such instrument or affect the validity of such instrument in any respect whatever, and such recorded or filed instrument shall constitute notice with like effect as if such instrument fully complied with the provisions of this section. An instrument will be in compliance with this section if it contains a statement in the following form: "This instrument was prepared by (name)".

(b) This section does not apply to any instrument executed prior to the effective date hereof; to any decree, order, judgment or writ of any court; to any will or death certificate; to any financing, continuation or termination statement permitted to be filed under chapter forty-six of this code; or to any instrument executed or acknowledged outside of this state.

(c) A survey document intended to be used in the transfer of real property, prepared by a licensed surveyor, and filed with a county clerk or accepted by a public official of this state shall have the licensed surveyor's signature and seal or stamp affixed thereto.

(d) If a survey document, prepared by a licensed surveyor, has been altered from its original form, it shall not be filed with a county clerk or accepted by a public official of this state, until the original licensed surveyor has initialed the changes.

(e) A document, plan, map, drawing, exhibit, sketch or pictorial representation prepared by a person exempted under the provisions of thirteen-a, chapter thirty of this code, is not required to have the signature and seal affixed thereto.

(f) A document, plan, map, drawing, exhibit, sketch or pictorial representation altered by a person not licensed under the provisions of article thirteen-a, chapter thirty of this code, shall have the alteration initialed by a surveyor licensed under the provisions of article thirteen-a, chapter thirty of this code.

WV Legislature

§39-1-2b. Recordation of certified copies of certain instruments.

Except as provided in this section, the clerk of the county commission of any county shall admit to record in the office of such clerk a copy of any contract, deed of trust, mortgage, lease, memorandum of lease, release, assignment, power of attorney or any other instrument or writing which has been certified by the clerk of the county commission of any other county of this state as being a true and correct copy and transcript from the records of said county. Any such recordations prior to the effective date of this section shall constitute notice with like effect as if such original instrument had been recorded therein. This section does not apply to deeds, wills or to any instrument filed in accordance with chapter forty-six of this code.

WV Legislature

§39-1-3. Who may take acknowledgment.

Upon the request of any person interested therein, such clerk of the county court shall also admit any such writing to record, as to any person whose name is signed thereto, upon a certificate of his acknowledgment before the president of a county court, a justice of the peace, notary public, recorder, prothonotary or clerk of any court, within the United States, the Philippine Islands, Island of Puerto Rico, Territory of Alaska, Territory of Hawaii, or any other territory, possession or dependency of the United States, or a commissioner appointed within the same by the Governor of this state, written or annexed to the same; or upon a certificate so written or annexed under the official seal of any ambassador, minister plenipotentiary, minister resident, charge d'affaires, consul general, consul, deputy consul, vice consul, consular agent, vice consular agent, commercial agent, or vice commercial agent, appointed by the government of the United States to any foreign country, or of the proper officer of any court of record of such country, or of the mayor or other chief magistrate of any city, town or corporation therein, that such writing was acknowledged by such person, or proved as to him by two witnesses, before any person having such appointment, or before such court, mayor, or chief magistrate.

WV Legislature

§39-1-4. Form of certificate of acknowledgment.

The certificate of acknowledgment mentioned in the preceding section may be in form or effect as follows:

State (territory or district) of ....., county of ....., to wit:

I, ..., recorder of said municipality; or I, ..., a notary public of said county; or I, ..., a clerk of the ..... court of said county; (or other officer or person authorized to take acknowledgments by section three of this article, as the case may be), do certify that ....., whose name (or names) is (or are) signed to the writing above (or hereto annexed) bearing date on the ..... day of ....., 20 ....., has (or have) this day acknowledged the same before me, in my said .....

Given under my hand this ..... day of ....., 20 .....

WV Legislature

§39-1-4a. Acknowledgment of persons in the military service of the United States of America.

Upon the request of any person interested therein, the clerk of the county court of any county in which any deed, contract, power of attorney, or other writing is to be, or may be, recorded, shall admit the same to record as to any person whose name is signed thereto who is in the military service of the United States (including the Women's Army Auxiliary Corps, Women's Appointed Volunteers for Emergency Service, Army Nurse Corps, "Spars," Women's Reserve, or similar women's auxiliary unit officially connected with the military service of the United States) or who is the spouse of any one in the military service of the United States (including the aforesaid components and auxiliary units officially connected therewith), upon the certificate of acknowledgment of such person before any commissioned officer of any branch of the military service of the United States, or auxiliary unit officially connected with such military service. Such acknowledgment may be taken at any place either within or outside of the United States of America, or any territory, possession or dependency thereof. The certificate of such acknowledgment need not state the place where same is taken and shall require no seal to be affixed thereto. The officer certifying such acknowledgment must state his rank, branch of military service, and identification number; and such certificate of acknowledgment may be in form and effect as follows:

IN THE MILITARY SERVICE OF THE UNITED STATES:

I, ..., a commissioned officer in the military service of the United States, do certify that ....., who is a member of the military service of the United States (or of ....., an auxiliary to the military forces of the United States), and/or ....., husband (or wife) of ....., a member of the military service of the United States (or of ....., an auxiliary to the military forces of the United States), whose name(s) is (are) signed to the foregoing writing bearing date on the ..... day of ....., 19....., has (have) this day acknowledged the same before me; and I further certify that I am a ..... in the ..... of the United States and (state rank) my identification number is .....

Given under my hand this ..... day of ....., 19....

.....

(Signature of Officer)

.....

(Official Title)

WV Legislature

§39-1-5. Acknowledgment by husband and wife.

When a husband and wife have signed a writing purporting to sell or convey real estate, the wife may acknowledge the same together with, or separately from her husband. Either the husband or the wife may sign and acknowledge the writing before the other has signed or acknowledged it. If both acknowledge the writing at the same time, the certificate of the acknowledgments may be in form or effect as follows:

State (territory or district) of ..... county of ....., to wit:

I, ..., a notary public of the said county of .....; or I, ..., clerk of the ..... court or county of .....; (or other officer or person authorized to take acknowledgments by section three of this article, as the case may be),* do certify ..... and ....., his or her wife whose names are signed to the writing above (or hereto annexed) bearing date the ..... day of ....., 20....., have this day acknowledged the same before me in my said .....

Given under my hand this ..... day of ....., 20.....

If the husband or wife acknowledge a deed or other writing separately from the other, the certificate of acknowledgment after the star in the foregoing form shall be in form or effect as follows: do certify that ....., the wife of ....., (or the husband of ....., as the case may be), whose name is signed to the writing above (or hereto annexed) bearing date the ..... day of ....., 20 ....., has this day acknowledged the same before me in my said .....

Given under my hand this ..... day of ....., 20 .....

WV Legislature

§39-1-6. Certificates as to wives living separate and apart to be prima facie evidence in certain cases.

The certificate of acknowledgment heretofore taken of a married woman to a deed or other writing conveying, or agreeing to sell and convey, real estate which was her sole and separate property, purporting to show that at the time of its execution and acknowledgment such married woman was living separate and apart from her husband, shall, in all cases where the validity of any such deed or other writing comes in question, be prima facie evidence of the facts therein stated.

WV Legislature

§39-1-7. False certificate of acknowledgment.

If any person shall in any case wilfully make any false certificate of acknowledgment, contrary to the true facts in the case, or shall certify the acknowledgment of any person whom he does not personally know to be the person whose name is signed to the writing acknowledged, he shall be guilty of a misdemeanor, and, upon conviction thereof, be fined not more than $500, and imprisoned not more than sixty days, at the discretion of the court.

WV Legislature

§39-1-8. Form of certificate of acknowledgment by attorney in fact.

When any writing has been executed by an attorney in fact, and an acknowledgment of the execution thereof is required or authorized for any purpose, the certificate of acknowledgment may be in form or effect as provided in section four of this article as far as the words "do certify," and thence as follows: do certify that ....., whose name is signed to the writing above (or hereto annexed) bearing date the ..... day of ....., 19....., as attorney in fact for ....., has this day acknowledged the same before me in my said .....

Given under my hand this ..... day of ....., 19.....

WV Legislature

§39-1-9. Acknowledgment by corporations.

The certificate of acknowledgment of a corporation may be in form or effect as prescribed in section four of this article as far as the words "do certify" and thence as follows: do certify that ....., who signed the writing above (or hereto annexed), bearing date the ..... day of ....., 19....., for ..... (name of corporation), has this day in my said county, before me, acknowledged the said writing to be the act and deed of said corporation.

Given under my hand this ..... day of ....., 19.....

WV Legislature

§39-1-10. When certificate to be under official seal.

If any acknowledgment be before a notary without this state, he shall certify the same under his official seal.

WV Legislature

§39-1-10a. Verification by written statement under certain conditions.

Any certificate, return, form, statement, or other document which is required by the State of West Virginia, or any office, department or agency thereof, and which does not require an acknowledgment under this article or other laws of recordation of the State of West Virginia, may be verified by written declaration that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required.

Any person making any false statement in any certificate, return, statement, or other document verified by such written declaration shall be subject to the same penalties as would be applicable had the same been verified by oath duly taken and acknowledged.

WV Legislature

§39-1-11. Recordation of writings and plats and papers annexed; index; interlineations; filing under Uniform Commercial Code.

Every writing (except financing, continuation, and termination statements and other statements and writings permitted to be filed under chapter 46 of this code) authorized by law to be recorded, when admitted to record, shall, with all certificates of acknowledgment, and all plats, schedules, and other papers thereto annexed or thereon indorsed, be recorded by, or under the direction of, the clerk of the county commission, in a well-bound book, to be carefully preserved; and there shall be an index to such book as well in the name of the grantee as of the grantor: Provided, That the county commission may, in accordance with the provisions of §5A-8-15 of this code, authorize the clerk to scan, record, and make available online when determined to be financially feasible by the county commission all such writings and papers in electronic form rather than in well-bound books, not prepare in separate books an index of any type, and replace existing well-bound books by scanning them in an approved electronic format: Provided, however, That existing well-bound books be retained either on-site or off-site unless the provisions of §5A-8-15 of this code are followed: Provided further, That any documents in an electronic format are stored on a server off site, such as a cloud-based server, to retain a backup copy of electronic documents.

After being recorded, such writing may be delivered to the party entitled to claim under the same. If, except in those cases where such writing is recorded by photography or similar process producing exact facsimile copies, there appear upon such writing, or any paper or certificate annexed thereto, any interlineation, erasure, or alteration, of which no memorandum is contained in the writing, paper, or certificate, the clerk shall append to the record thereof a memorandum describing as accurately as may be such interlineation, erasure, or alteration; and such memorandum shall be copied into every such writing, paper, or certificate. Every such memorandum shall be prima facie evidence of what is stated therein: Provided, That the clerk of the county commission may refuse to accept for recordation any instrument printed on both sides of the paper or printed in whole or part in smaller than 10-point type with at least two points separating each line. Any failure of such instrument to be so accepted by the clerk of the county commission shall not affect the validity thereof as to the parties thereto: Provided, however, That any such instrument shall be accepted by the clerk for recording at one and one-half times the legal fee therefor.

Financing, continuation, and termination statements and other statements and writings permitted to be filed under chapter 46 of this code shall be filed in a proper file by the clerk of the county commission or the Secretary of State, as the case may be, as specified in said chapter 46. Such statements and writings filed in the office of the clerk of the county commission and such statements and writings filed in the office of the Secretary of State shall be indexed according to the name of the debtor and shall disclose the assigned file number and the address of the debtor given in the respective statement or writing. The date and hour of filing and the file number shall be noted on the statement or writing involved. A financing, continuation, or termination statement or other statement or writing permitted to

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be filed under chapter 46 of this code may, after the same ceases to be effective or lapses, as specified in said chapter 46, be removed from the files in the office of the clerk of the county commission or the Secretary of State, as the case may be, and destroyed.

WV Legislature

§39-1-11a. Photographic recordation.

It shall be as legal and effective in all respects to photographically record writings, plats and maps and the papers thereto annexed as if such writings, plats and maps and papers thereto annexed had been recorded by handwriting, or by the use of a typewriter, or by any other means useful for the purpose.

WV Legislature

§39-1-12. Special recordation of writing not acknowledged or proved for regular recordation.

If any writing which it is lawful for a clerk of the county court to admit to record, on proper acknowledgment or proof, has been or shall be lodged in his office, and has remained or shall remain therein six months without being acknowledged or proved so that it can be duly admitted to record, the clerk of the county court shall, for the preservation thereof, when required by any person interested, copy the same into a book separate from those in which writings properly acknowledged or proved are recorded, and keep an index to such book, as in the case of writings duly admitted to record. In case of the loss or destruction of any such writing, such copy shall be prima facie evidence of the contents thereof.

WV Legislature

§39-1-13. Duty to record plat or plan of lots.

When any tract or parcel of land within the limits of any county of the state has been or shall be hereafter subdivided into lots by any partition of land or by order of the owner or owners, or his or their agent, or otherwise and any lot or lots have been sold or conveyed, or are offered for sale, from the tract or parcel of land so divided, according to a plat or plan of subdivision, without such plat or plan of subdivision having been filed for record, it shall be the duty of the owner or owners of such tract of land, or his or their agent, authorizing such plat or plan of subdivision of such tract of land to be laid out, to file such plat or plan for record in the office of the clerk of the county court and the office of the county assessor of the county wherein such land so divided is situate.

WV Legislature

§39-1-13a. Consolidation order book.

The county court of any county may order the clerk of such county court to provide a book or series of books, to be entitled "Consolidation Order Book," in which such clerk shall record all real estate consolidation orders entered by the county court pursuant to section seventeen, article four, chapter eleven of this code, and likewise to provide an index therefor in which shall be entered pertinent index data consistent with the provisions of section two, article two of this chapter. The county court shall provide funds for the payment for such record book, index and other necessary supplies incident to the keeping thereof.

WV Legislature

§39-1-14. Notification to file plat for record.

Upon notice from the clerk of the county court wherein such land so divided is situate, or upon notice from any person owning a lot or lots (or an undivided share or any interest therein) in any such tract or parcel of land so divided, to the owner or owners or his or their agent, that the plat or plan of subdivision has not been properly filed, the owner or owners, or his or their agent, shall cause the same to be properly filed for record within sixty days from such notification.

WV Legislature

§39-1-15. Failure to file plat after notification.

If such owner, or owners, or his or their agent, upon having been so notified, shall fail to cause such plat or plan to be filed in such offices as aforesaid, such owner, or owners, or his or their agent, shall forfeit and pay the sum of $200 for each period of sixty days that shall elapse after such notification without such plat having been filed for record, such sum or sums to be recovered as debts of like amount are by law recoverable at the suit of any party, or parties, giving such notice. The party or parties bringing such suit shall be entitled to one half of the amount so recovered and the other half shall go to the county fund of such county.

WV Legislature

§39-1-16. Approval by city council or commissioners prerequisite to laying out subdivision.

In case a proposed subdivision of any lot or parcel of land is situate within the corporate limits of any municipality, or abutting thereon, it shall be the duty of the owner, or owners, or his or their agent, to submit a plat or plan of such subdivision to the council or commissioners of such municipality, showing the street and alley connections that such subdivision makes with such municipality, and furnishing full information for the purpose of determining whether the proposed subdivision will impede or prevent the further development and extension of such municipality where such subdivision is situate. Before any such subdivision is finally laid out, it shall have the approval of the council or commissioners of the municipality wherein the subdivision is situate, or upon which it abuts, and such approval and the date thereof shall be indicated on the plat or plan of such subdivision before the same is finally filed in the office of the clerk of the county court and the county assessor's office.

WV Legislature

§39-1-17. Duty to provide cornerstone monuments; acknowledgment or proof not necessary to recordation of plat.

It shall be the duty of the engineer in charge, or the owner, or owners, or the agent of the owner or owners, of any subdivision of land in this state to have permanent cornerstone monuments, of stone or concrete, not less than twenty-four inches in length by six inches square at the top, or not less than six inches in diameter, with proper centers, placed at the most important corners (where permanent corners do not already exist) so that there shall be not less than two permanent corners to each lot or block of any subdivision thereafter made, and the position of the same shall be indicated on the plan or map when finally filed for record. No certificate of acknowledgment, or other proof thereof, shall be necessary or prerequisite to the recordation of such plat, map or plan.

WV Legislature

§39-1A-1.

Repealed.

Acts, 2014 Reg. Sess., Ch. 133.

WV Legislature

§39-1A-2.

Repealed.

Acts, 2014 Reg. Sess., Ch. 133.

WV Legislature

§39-1A-3.

Repealed.

Acts, 2014 Reg. Sess., Ch. 133.

WV Legislature

§39-1A-4.

Repealed.

Acts, 2014 Reg. Sess., Ch. 133.

WV Legislature

§39-1A-5.

Repealed.

Acts, 2014 Reg. Sess., Ch. 133.

WV Legislature

§39-1A-6.

Repealed.

Acts, 2014 Reg. Sess., Ch. 133.

WV Legislature

§39-1A-7.

Repealed.

Acts, 2014 Reg. Sess., Ch. 133.

WV Legislature

§39-1A-8.

Repealed.

Acts, 2014 Reg. Sess., Ch. 133.

WV Legislature

§39-1A-9.

Repealed.

Acts, 2014 Reg. Sess., Ch. 133.

WV Legislature

§39-2-1. Preparation of general index.

The county court of any county may order the clerk of such court to provide a general index for the deed books, trust deed books, judgment lien dockets, marriage records, release deed books, or other record books, or any of them, in such clerk's office; and may order the clerk of the circuit court, or the clerk of any other court of record, of such county to provide a general index for the law and chancery order books, or other record books, or any of them, in his office; or may let to the lowest bidder a contract to provide any such general index or indexes.

WV Legislature

§39-2-2. Contents of general indexes.

In the appropriate general index in the office of the clerk of the county court, to the extent that the same has been or shall be provided, shall be indexed the names of all grantors and grantees of deeds, trust deeds, release deeds, contracts, leases, or other writings; the names of the parties to marriage records; and the names of all persons for or against whom judgments or decrees are rendered. Where a deed has been executed by a trustee, a special commissioner or other officer, it shall be indexed in the name of the former owner of the property conveyed, as well as in the name of the person executing such deed. In the general index in the office of the clerk of the circuit court, or other court of record, to the extent that such index has been or shall be provided, shall be indexed the names of all plaintiffs and defendants, versus and adversus, for or against whom judgments or decrees have been rendered, at law or in chancery. In addition to the foregoing requirements, any clerk may include, or direct to be included, in any general index, such data as he shall deem proper. It shall be the duty of every clerk for whose office a general index has been provided, to make all proper entries in each general index in his office within a reasonable time after making the recordation to which the index entry pertains.

WV Legislature

§39-2-3. Records of county courts and other courts -- Binding or transcribing.

The county court of any county may order any of the books and records in its clerk's office and either the county court or the circuit court, or any other court of record, may order any of its own books or records, to be bound or transcribed, and shall make a reasonable allowance therefor, which shall be paid out of the county treasury.

WV Legislature

§39-2-4. Records of county courts and other courts -- Binding or transcribing -- Prerequisites; effect.

No such allowance shall be made for any transcript until commissioners appointed for the purpose by the court ordering the transcript to be made shall have examined it and written at the foot thereof a certificate of its correctness. Thenceforth the same faith and credit shall be given to it that the book or record transcribed would have been entitled to.

WV Legislature

§39-2-5. Records of county courts and other courts -- Binding or transcribing -- Removal from county.

Any court authorized by section three of this article to have any books or records rebound may have the same taken out of the county for such purpose.

WV Legislature

§39-2-6. Records of county commissions, correction recordation.

Every clerk of a county commission shall establish a system which will permanently record any corrections made to any index under his or her care, custody and control. Such recordation of correction shall include the date such correction was made.

WV Legislature

§39-3-1. Admission to record of certified copy when original writing lost, mislaid or destroyed.

If any writing be admitted to record in any county of this state or of any other state, and it be proper for such writing to be admitted to record in a county of this state, and the same before having been admitted to record in such county be lost, mislaid or destroyed, on affidavit of such fact, the clerk of the county court of such county wherein such writing is to be recorded may admit to record a copy of such writing from the records of any county of any state wherein it is recorded properly certified by the clerk of such county court or other officer corresponding thereto; and the record of the copy so admitted shall have the same effect as if the original had been admitted to record at the time when the copy was admitted. The clerk of the county court of any county shall also admit to record such copy of a record or paper as is mentioned in section nine, article one of chapter fifty-seven of this code.

WV Legislature

§39-3-2. Lost records or papers recorded or filed anew.

Where any book containing judgments, decrees, orders or proceedings of a court, or proceedings at rules, or any book containing the record of wills, deeds or other papers, or where any paper filed in a clerk's office, is lost, the clerk in whose office such book or paper was, upon the production to him of any original paper which was recorded in such book, or any attested copy of the record thereof, or of an attested copy of anything else in such book, or of any paper so filed, shall, on application, record or file the same anew. The record shall show whether it is made from an original or a copy, and how the paper from which it is made was authenticated or attested. Such record shall have the same effect that the record or paper for which it is substituted would have had.

WV Legislature

§39-3-3. Recordation of certified copies at instance of county court when record lost or destroyed.

Where any records have been or shall be lost or destroyed, by fire or otherwise, and the contents thereof shall have been recorded in the clerk's office of any court of any county in this state, or in the Auditor's office, or in any other proper office in this state, the county court of the county wherein such records are so lost or destroyed may cause duly certified copies of the same to be procured from the Auditor's office, such clerk's office or other proper office of any county; and it shall be the duty of the Auditor or the clerk of any court of this state, or other custodian of records, to permit such copies to be made, and, when correctly copied and certified to be true copies of such record, the same shall be recorded in the proper clerk's office of the county wherein such records are lost or destroyed, in well-bound books provided for that purpose, whereupon the record thereof shall have the same force and effect as evidence for all purposes as the original records have, or would have had, and copies may be taken and certified by the clerk in whose office such copied records may be, which copies, when so made and certified by such clerk, shall be received as prima facie evidence for all purposes, and with like effect as copies from original records. And the county court of any county desiring to procure copies of any such records in other counties or offices shall make provision for the payment of such fees therefor as may be allowed by law or agreed upon.

WV Legislature

§39-3-4. Loss of court records; reentries.

Where any book containing judgments, decrees, orders or proceedings of a court, or proceedings at rules, is lost, and there can be again entered correctly, by means of any writing, any matters which were in such book, the court may cause its clerk to have such matters reentered, and such entries shall have the same effect as the original entries.

WV Legislature

§39-3-5. Loss of original papers in any cause or appellate court record; effect of papers supplied.

If, in any cause, the original papers therein, or any of them, or the record for or in an appellate court, or any paper filed or connected with such record, be lost, the court wherein the case is, or in which, but for such loss, it would or ought to be, may docket the same, and, on affidavit of such loss, the cause may be proceeded in, heard and determined, upon an authenticated copy of what is lost, or proof of the contents thereof; or if the cause be in an appellate court, upon a new record made up from the records and papers of the court below, and certified by the proper officer; or, in case the record and papers, or any part thereof, be lost or destroyed, the court below may, upon application of either party, upon reasonable notice to the opposite party, supply such record or part thereof, from the best evidence before it, either documentary or parol, which may be used in the court of appeals for the same purposes that the original might be. The court may, however, at the instance of either party, or in its discretion, require new pleadings to be made up in whole or in part; and the plaintiff, instead of proceeding as hereinbefore provided for, may commence and prosecute a new suit for the same matter; and such new suit may, if the former suit was in due time, be brought within one year after such loss, notwithstanding the expiration of the time within which suit must otherwise have been brought. If a cause has been decided and the original papers therein have been lost, the court by which the cause was decided, on affidavit of such loss, by some person interested therein and who was a party in such suit, may redocket such cause, and upon motion of such affiant, and after reasonable notice to all parties interested in such cause, shall supply such lost papers or parts thereof by authenticated copies of the same or proof of the contents thereof, and the papers thus supplied shall have the same effect as the papers for which they are substituted would have had.

WV Legislature

§39-3-6. When books or papers deemed lost.

Where any book or paper is obliterated, defaced or injured so as to be in whole or in part illegible, or is destroyed, or carried away and concealed, or is in the possession or control of armed rebels or a public enemy, it shall be deemed lost for the purposes of this article.

WV Legislature

§39-3-7. Procedure to prove contents of lost papers or records -- Generally.

Any person desirous of proving the contents of any paper filed in a clerk's office or anything which was of record in any book therein may, if such paper or book be lost within the meaning of this article, present to the circuit court of the county wherein such paper or book was filed or kept, a petition specifying with reasonable certainty the nature of the paper or record, the contents of which he desires to prove, and what persons may be affected by such proof. Reasonable notice of the time and place of proceeding on such petition shall be given to the parties interested. Such notice may be served as prescribed in sections one and two, article two, chapter fifty-six of this code. If any person who may be affected by the proof be an infant or insane person, a guardian ad litem shall be appointed to attend to the case on his or her behalf. Whereupon such court shall make an order referring such petition to one of the commissioners of the court, who shall take proof of the contents of such record or paper, and make report of same, with the evidence taken by him to the court. Such report shall be filed in the office of the clerk of such court at least ten days before it shall be acted upon by the court, when the court may confirm or recommit the same or make any order in relation thereto which may be necessary and proper. If such report be confirmed by the court, it shall be recorded in the book where the original paper was or should have been recorded; or if it was a paper on file in the office, shall be filed away where such paper was or should have been filed; and such report, when finally confirmed and recorded or filed, shall in all cases be prima facie evidence of what is stated therein, and, after ten years from the confirmation of such report, shall be conclusive evidence of what is stated therein.

WV Legislature

§39-3-8. Procedure to prove contents of lost papers or records -- Right to rehearing.

Such court may, however, without notice or the appointment of a guardian ad litem, proceed on such petition in accordance with the preceding section and with like effect: Provided, That any person whose interest may be affected by the proceedings under this section, or who in any case shall have been proceeded against by publication, or the personal representative of any such, shall have the same rights, as to a rehearing, that may be allowed by law to nonresident defendants in actions at law or suits in equity.

WV Legislature

§39-3-9. Taking testimony as to lost records -- Action by county clerk.

Whenever the book or books in which are required to be recorded deeds, wills or other papers relating to the title or boundaries of lands, have been, or may hereafter be, burned, lost or destroyed, it shall be lawful for the clerk of the county court of the county in which such burning, loss or other destruction took place to take such testimony in relation to such title papers as is hereinafter provided.

WV Legislature

§39-3-10. Taking testimony as to lost records -- Record.

He shall provide a well-bound book at the expense of the county in which to record such testimony as he may take for the purpose aforesaid. Such testimony shall be taken at his office, between the hours of nine o'clock a.m., and five o'clock p.m., and the taking thereof shall be commenced not later than one year and concluded not later than five years after such burning, loss or destruction.

WV Legislature

§39-3-11. Taking testimony as to lost records -- Publication of notice.

Such clerk shall give notice, as hereinafter provided, of the time and place of the commencement of taking such testimony. A copy of which notice, together with the affidavit of publication, shall be recorded in the book aforesaid. Such notice shall be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county. The costs of publishing such notice shall be paid by the county.

WV Legislature

§39-3-12. Taking testimony as to lost records -- Subjects of inquiry.

On the day fixed by such notice, such clerk shall take and record in such book the testimony of any credible person, who may appear before him touching the existence or execution of any deed, will, or other title paper which was recorded in any book burned, lost or destroyed, as aforesaid. The witness shall describe the paper as nearly as may be; and if a deed be the subject of inquiry, the names of the grantor and grantee, the date thereof, and the number of acres called for shall be stated as nearly as the witness can recollect. The witness shall further state as accurately as he is able the locality of the land conveyed; the name of the tract, if it had any; whether it is improved or unimproved, and if improved, who made the improvements; who lived upon the same, and how long; what the calls were with regard to corners, boundaries, or adjacent lands; and anything else which the clerk may deem material to describe the title to the land, or to locate the same. If a will or other title paper than a deed be the subject of inquiry, the witness shall describe the same with the same particularity as in the case of a deed.

WV Legislature

§39-3-13. Taking testimony as to lost records -- Powers of clerk; death, etc., of clerk.

For the purpose of taking such testimony, such clerk shall have authority to summon witnesses and enforce their attendance when desired by any person interested, in like manner as witnesses are compelled to appear before commissioners in chancery; to compel the production before him of any document, paper or book that he may deem pertinent for the purpose of any particular inquiry; and to administer oaths to such witnesses as may be brought before him Any person who shall wilfully swear falsely before such clerk to any material fact shall be guilty of perjury, and, upon conviction thereof, shall be punished as in other cases of perjury. When the testimony in any case shall have been partly taken by a clerk, and he shall die or his place be otherwise vacated before such testimony is completed, the successor of such clerk may complete the taking of the same with like effect as if it had been completed by the clerk who began to take the same.

WV Legislature

§39-3-14. Taking testimony as to lost records -- Fees payable to clerk and witnesses.

The person at whose instance such testimony is taken shall pay to such clerk for his services in such behalf the same fees as are allowed to commissioners in chancery, and to witnesses the same compensation as is allowed to witnesses in other cases. All such fees due the clerk shall be collected by him and paid into the county treasury, and may be collected in the same manner and by the same remedies as costs in a common-law action.

WV Legislature

§39-3-15. Taking testimony as to lost records -- Adjournments; completion and preservation of testimony.

Such clerk may adjourn the taking of such testimony from day to day or from time to time, not exceeding thirty days at any one adjournment, until he shall have completed and closed his duties under the provisions of this article, but not continuing the taking thereof beyond the period prescribed in section ten of this article; after which he shall preserve the book or books containing his proceedings among the records of his office. Such clerk shall give certified copies of such depositions, whenever requested by any person to do so, and he shall receive the same compensation therefor as for other certified copies.

WV Legislature

§39-3-16. Taking testimony as to lost records -- Admissibility of depositions or copies.

The depositions taken as aforesaid shall be admissible in all suits or controversies in relation to the title or boundaries of lands in such county, whenever such depositions are relevant and no higher or better evidence can be had; and copies of such depositions, when duly certified by the clerk of the county court of such county, shall be admissible in any court the same as the original.

WV Legislature

§39-4-1. Short title.

This article may be cited as the Revised Uniform Law on Notarial Acts.

WV Legislature

§39-4-2. Definitions.

In this article:

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

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

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

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

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

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

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

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

(5) "Notarial act" means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

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

(7) "Notary public" means an individual commissioned to perform a notarial act by the West Virginia Secretary of State.

(8) "Official stamp" means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

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

WV Legislature

commercial entity.

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

(11) "Sign" means, with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound or process.

(12) "Signature" means a tangible symbol or an electronic signature that evidences the signing of a record.

(13) "Stamping device" means:

(A) A physical device capable of affixing to or embossing on a tangible record an official stamp; or

(B) An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

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

WV Legislature

§39-4-3. Applicability; operative date of enactment; effect on existing law.

(a) This article applies to a notarial act performed on or after July 1, 2014.

(b) The repeal of chapter twenty-nine-c of this code and the repeal of articles four, chapter twenty-nine and one-a, chapter thirty-nine of this code and the amendment and reenactment of section two, article one, chapter fifty-nine of this code, pursuant to the provisions of Enrolled House Bill No. 4012, as enacted by the Legislature during the regular session, 2014, are operative on June 30, 2014. The prior enactments of chapter twenty-nine-c; articles four, chapter twenty-nine and one-a, chapter thirty-nine; and section two, article one, chapter fifty-nine of this code, whether amended and reenacted or repealed by the passage of Enrolled House Bill No. 4012, have full force and effect until the provisions of Enrolled House Bill No. 4012, are operative on June 30, 2014, unless after the effective date of Enrolled House Bill No. 4012, and prior to the operative date of June 30, 2014, the provisions of Enrolled House Bill No. 4012, are otherwise repealed or amended and reenacted.

WV Legislature

§39-4-4. Authority to perform notarial act.

(a) A notarial officer may perform a notarial act authorized by this article or by law of this state other than this article.

(b) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse is a party, or in which either of them has a direct beneficial interest, financial or otherwise. A notarial act performed in violation of this subsection is voidable.

WV Legislature

§39-4-5. Requirements for certain notarial acts.

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

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

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

(d) A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true and accurate transcription or reproduction of the record or item.

(e) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in subsection (b), section five hundred five, article three, chapter forty-six of this code.

WV Legislature

§39-4-6. Personal appearance required.

(a) If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer, unless the individual making the statement or executing the signature appears personally by communication technology, as provided in §39-4-37 or §39-4-38 of this code.

(b) The Secretary of State shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq*. of this code establishing specific requirements for the performance of a notarial act on behalf of an individual appearing before a notary public by means of communication technology.

WV Legislature

§39-4-6a. Remote acknowledgements and notarizations under COVID-19 Executive Order deemed valid.

Acknowledgements and notarizations performed by means of remote communication technology, pursuant to section 6 of the Governor's Executive Order 11-20 effective March 25, 2020, by which the Governor suspended the provisions of §39-4-6 of the code applicable to court reporters and other notaries, are deemed to be valid and cured of any defect from failure to comply with §39-4-6 of this code if the acknowledgements and notarizations were performed in accordance with the emergency rules promulgated by the West Virginia Secretary of State, which are found at the Code of State Rules §153-45 *et. seq*.

WV Legislature

§39-4-7. Identification of individual.

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

(b) A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(1) By means of:

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

(B) Another form of government identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual and is satisfactory to the officer; or

(2) By a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, driver's license or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act.

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

WV Legislature

§39-4-8. Authority to refuse to perform notarial act.

(a) A notarial officer may refuse to perform a notarial act if the officer is not satisfied that:

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

(2) The individual's signature is knowingly and voluntarily made.

(b) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than this article.

WV Legislature

§39-4-9. Signature if individual is unable to sign.

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

WV Legislature

§39-4-10. Notarial act in this state.

(a) A notarial act may be performed in this state by:

(1) A notary public of this state;

(2) A judge, clerk or deputy clerk of a court of this state; or

(3) Any other individual authorized to perform the specific act by the law of this state.

(b) The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (1) or (2), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.

WV Legislature

§39-4-11. Notarial act in another state.

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

(1) A notary public of that state;

(2) A judge, clerk or deputy clerk of a court of that state; or

(3) Any other individual authorized by the law of that state to perform the notarial act.

(b) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in subdivision (1) or (2), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.

WV Legislature

§39-4-12. Notarial act under authority of federally recognized Indian tribe.

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

(1) A notary public of the tribe;

(2) A judge, clerk or deputy clerk of a court of the tribe; or

(3) Any other individual authorized by the law of the tribe to perform the notarial act.

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

(c) The signature and title of a notarial officer described in subdivision (1) or (2), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.

WV Legislature

§39-4-13. Notarial act under federal authority.

(a) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by:

(1) A judge, clerk or deputy clerk of a court;

(2) An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;

(3) An individual designated a notarizing officer by the United States Department of State for performing notarial acts overseas; or

(4) Any other individual authorized by federal law to perform the notarial act.

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

(c) The signature and title of an officer described in subdivision (1), (2) or (3), subsection (a) of this section, conclusively establish the authority of the officer to perform the notarial act.

WV Legislature

§39-4-14. Foreign notarial act.

(a) In this section, "foreign state" means a government other than the United States, a state or a federally recognized Indian tribe.

(b) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.

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

(d) The signature and official stamp of an individual holding an office described in subsection (c) of this section are prima facie evidence that the signature is genuine and the individual holds the designated title.

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

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

WV Legislature

§39-4-15. Certificate of notarial act.

(a) A notarial act must be evidenced by a certificate. The certificate must:

(1) Be executed contemporaneously with the performance of the notarial act;

(2) Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the Secretary of State;

(3) Identify the jurisdiction in which the notarial act is performed;

(4) Contain the title of office of the notarial officer; and

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

(b) If a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in subdivisions (2), (3) and (4), subsection (a) of this section, an official stamp may be affixed to the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in said subdivisions, an official stamp may be attached to or logically associated with the certificate.

(c) A certificate of a notarial act is sufficient if it meets the requirements of subsections (a) and (b) and:

(1) Is in a short form set forth in section sixteen of this article;

(2) Is in a form otherwise permitted by the law of this state;

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

(4) Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in sections five, six and seven of this article or law of this state other than this article.

(d) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in sections four, five and six of this article.

(e) A notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.

(f) If a notarial act is performed regarding a tangible record, a certificate must be part of, or

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securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to or logically associated with, the electronic record. If the Secretary of State has established standards pursuant to section twenty-five of this article, for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

WV Legislature

§39-4-16. Short form certificates.

The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by subsections (a) and (b), section fifteen of this article:

(1) For an acknowledgment in an individual capacity:

State of .....

County of .....

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

Signature of notarial officer

Stamp

Title of office .....

My commission expires: .....

(2) For an acknowledgment in a representative capacity:

State of .....

County of .....

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

.....

Signature of notarial officer

Stamp

Title of office.....

My commission expires: .....

(3) For a verification on oath or affirmation:

State of .....

WV Legislature

County of .....

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

.....

Signature of notarial officer

Stamp

Title of office .....

My commission expires: .....

(4) For witnessing or attesting a signature:

State of .....

County of .....

Signed or attested before me on ..... [Date] by ..... [Name(s) of individual(s) making statement]

.....

Signature of notarial officer

Stamp

Title of office .....

My commission expires: .....

(5) For certifying a copy of a record:

State of .....

County of .....

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

Dated .....

.....

WV Legislature

Signature of notarial officer

Stam

Title of office .....

My commission expires: .....

WV Legislature

§39-4-17. Official stamp.

The official stamp of a notary public must:

(1) Include the notary public's name, address, jurisdiction, commission expiration date and other information required by the Secretary of State; and

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

WV Legislature

§39-4-18. Stamping device.

(a) A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act. On resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable. On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing or securing it against use in a manner that renders it unusable.

(b) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall notify promptly the Secretary of State on discovering that the device is lost or stolen.

WV Legislature

§39-4-19. Notification regarding performance of notarial act on electronic record, selection of technology.

(a) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(b) Before a notary public performs the notary public's initial notarial act with respect to an electronic record, a notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to electronic records and identify the technology the notary public intends to use. If the Secretary of State has established standards for approval of technology pursuant to section twenty-five of this article, the technology must conform to the standards. If the technology conforms to the standards, the Secretary of State shall approve the use of the technology.

WV Legislature

§39-4-20. Commission as notary public; qualifications; no immunity or benefit; disposition of fees.

(a) An individual qualified under subsection (b) of this section may apply to the Secretary of State for a commission as a notary public through the Secretary of State's online notary system. The applicant shall comply with and provide the information required by rules promulgated by the Secretary of State and pay any application fee.

(b) An applicant for a commission as a notary public must:

(1) Be at least 18 years of age;

(2) Be a citizen or permanent legal resident of the United States;

(3) Be a resident of or have a place of employment or practice in this state;

(4) Be able to read and write English;

(5) For any applicant that has not been commissioned as a notary prior to January 1, 2018, have a high school diploma or its equivalent; and

(6) Not be disqualified to receive a commission under §39-4-23 of this code.

(c) Before issuance of a commission as a notary public, an applicant shall provide a statement on the notary application that they solemnly swear or affirm, under penalty of perjury, that the answers to all questions in this application are true, complete, and correct; that he or she has carefully read the notaries public law of West Virginia; and, if appointed and commissioned as a notary public, he or she will perform faithfully, to the best of his or her ability all notarial acts in accordance with the law.

(d) On compliance with this section, the Secretary of State shall issue a commission as a notary public to an applicant for a term of five years.

(e) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.

WV Legislature

§39-4-21. Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public.

(a) The Secretary of State may deny, refuse to renew, revoke, suspend or impose a condition on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public, including:

(1) Failure to comply with this article;

(2) A fraudulent, dishonest or deceitful misstatement or omission in the application for a commission as a notary public submitted to the Secretary of State;

(3) A conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty or deceit;

(4) A finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty or deceit;

(5) Failure by the notary public to discharge any duty required of a notary public, whether by this article, rules promulgated by the Secretary of State, or any federal or state law;

(6) Use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right or privilege that the notary does not have;

(7) Violation by the notary public of a rule of the Secretary of State regarding a notary public;

(8) Denial, refusal to renew, revocation, suspension or conditioning of a notary public commission in another state;

(9) Failure of the notary public to maintain an assurance as provided in subsection (d), section twenty of this article;

(10) Charging more than the maximum fees specified in section thirty of this article; and

(11) Failure to notify the Secretary of State of an address or name change pursuant to subsection (b), section twenty-two of this article.

(b) If the Secretary of State denies, refuses to renew, revokes, suspends or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with article five, chapter twenty-nine-a of this code.

(c) The authority of the Secretary of State to deny, refuse to renew, suspend, revoke or impose conditions on a commission as a notary public does not prevent a person from seeking and obtaining other criminal or civil remedies provided by law.

WV Legislature

§39-4-22. Database of notaries public.

(a) The Secretary of State shall maintain an electronic database of notaries public:

(1) Through which a person may verify the authority of a notary public to perform notarial acts; and

(2) Which indicates whether a notary public has notified the Secretary of State that the notary public will be performing notarial acts on electronic records.

(b) Not later than thirty days after a notary public either:

(1) Changes the address of his or her business or residence; or

(2) Changes his or her name, the notary public shall notify the Secretary of State of the address or name change.

WV Legislature

§39-4-23. Prohibited acts.

(a) A commission as a notary public does not authorize an individual to:

(1) Assist persons in drafting legal records, give legal advice or otherwise practice law;

(2) Act as an immigration consultant or an expert on immigration matters;

(3) Represent a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship or related matters; or

(4) Receive compensation for performing any of the activities listed in this subsection.

(b) A notary public may not engage in false or deceptive advertising.

(c) A notary public, other than an attorney licensed to practice law in this state, may not use the term "*notario*" or "*notario publico*".

(d) A notary public, other than an attorney licensed to practice law in this state, may not advertise or represent that the notary public may assist persons in drafting legal records, give legal advice, or otherwise practice law.

(e) If a notary public who is not an attorney licensed to practice law in this state in any manner advertises or represents that the notary public offers notarial services, whether orally or in writing, the notary public shall provide a clear disclaimer that the notary is not authorized to practice law under the following conditions:

(1) If the form of advertisement or representation is not broadcast media, print media or the internet and does not permit inclusion of a disclaimer as required by subsection (e) because of size, it must be displayed prominently or provided at the place of performance of the notarial act before the notarial act is performed.

(2) If the form of advertisement is made through broadcast media, print media or the Internet, the following statement, or an alternate statement authorized or required by the Secretary of State, shall be prominently included in each advertisement or representation: "I am not an attorney licensed to practice law in this state. I am not permitted to draft legal records, give advice on legal matters, including but not limited to, immigration, or charge a fee for those activities".

(f) Except as otherwise allowed by law, a notary public may not withhold access to or possession of an original record provided by a person that seeks performance of a notarial act by the notary public.

WV Legislature

§39-4-24. Validity of notarial acts.

Except as otherwise provided in subsection (b), section four of this article, the failure of a notarial officer to perform a duty or meet a requirement specified in this article does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this article does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than this article or law of the United States. This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

WV Legislature

§39-4-25. Rules.

(a) The Secretary of State may promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement this article. Rules promulgated regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may:

(1) Prescribe the manner of performing notarial acts regarding tangible and electronic records;

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

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

(4) Prescribe the process of granting, renewing, conditioning, denying, suspending or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public;

(5) Include provisions to prevent fraud or mistake in the performance of notarial acts;

(6) Establish the process for approving and accepting surety bonds and other forms of assurance under subsection (d), section twenty of this article; and

(7) Establish fees, with legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. Fees collected by the Secretary of State pursuant to section two, article one, chapter fifty-nine of this code shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required by the provisions of article four, chapter thirty-nine of this code.

(b) In promulgating, amending or repealing rules about notarial acts with respect to electronic records, the Secretary of State shall consider, so far as is consistent with this article:

(1) The most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State;

(2) Standards, practices and customs of other jurisdictions that substantially enact this article; and

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(3) The views of governmental officials and entities and other interested persons.

WV Legislature

§39-4-26. Notary public commission and commissioner appointment in effect.

(a) A commission as a notary public in effect on June 30, 2014, continues until its date of expiration. A notary public who applies for a commission as a notary public on or after July 1, 2014, is subject to and shall comply with this article. A notary public, in performing notarial acts on or after July 1, 2014, shall comply with this article.

(b) An appointment as commissioner under the repealed provisions of article four, chapter twenty-nine of this code, in effect on June 30, 2014, continues until its date of expiration. A commissioner, in performing notarial acts on or after July 1, 2014, shall comply with this article: Provided, That a person holding a commission pursuant to the provisions of article four, chapter twenty-nine of this code, on June 30, 2014, is not required to obtain or use a stamp required by section seventeen of this article, prior to the expiration of that commission.

WV Legislature

§39-4-27. Savings clause.

This article does not affect the validity or effect of a notarial act performed before July 1, 2014.

WV Legislature

§39-4-28. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

WV Legislature

§39-4-29. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U. S. C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U. S. C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U. S. C. Section 7003(b).

WV Legislature

§39-4-30. Maximum fees.

(a) The maximum fee in this state for notarization of each signature and the proper recordation thereof in the journal of notarial acts is $10.00 for each signature notarized.

(b) The maximum fee in this state for certification of a facsimile of a document, retaining a facsimile in the notary's file, and the proper recordation thereof in the journal of notarial acts is $10.00 for each eight and one-half by eleven inch page retained in the notary's file.

(c) The maximum fee in this state is $10.00 for any other notarial act performed.

WV Legislature

§39-4-31. Government notaries public.

(a) State and local government employees may be commissioned as government notaries public to act for and in behalf of their respective state and local government offices.

(b) A state or local government employee commissioned under this section shall meet the requirements for qualification and appointment prescribed in this article except that the head of the state or local government office where the applicant is employed, or his or her designee, shall execute a certificate that the application is made for the purposes of the office and in the public interest and submit it to the Secretary of State together with the application for appointment as a notary public.

(c) The costs of application and all notary supplies for a commissioned state or local government employee shall be paid from funds available to the office in which he or she is employed.

(d) All fees received for notarial services by a government notary public appointed for and in behalf of a state or local government office shall be remitted by him or her to the state or local government office in which he or she is employed.

(e) A government notary public must comply with all provisions of this article in the performance of notarial acts.

(f) A government notary public may acknowledge any document required to be acknowledged by a notary public: Provided, That a government notary public may not operate privately.

WV Legislature

§39-4-32. Liability of notary and of an employer of notary.

(a) A notary public is liable to the persons involved for all damages proximately caused by the notary's official misconduct.

(b) The employer of a notary public is also liable to the persons involved for all damages proximately caused by the notary's official misconduct, if:

(1) The notary public was acting within the scope of his or her employment at the time he or she engaged in the official misconduct; and

(2) The employer consented to the notary public's official misconduct.

(c) It is not essential to a recovery of damages that a notary's official misconduct be the only proximate cause of the damages.

(d) For the purposes of this section, the term "official misconduct" means any act or conduct that:

(1) May result in the denial, refusal to renew, revocation, suspension or condition commission of a notary public pursuant to section twenty-one of this article; or

(2) Is prohibited by section twenty-three of this article.

WV Legislature

§39-4-33. Criminal penalties.

(a) A notary public who knowingly and willfully commits any official misconduct is guilty of a misdemeanor and, upon conviction, shall be fined not more than $5,000 or confined in jail not more than one year, or both fined and confined.

(b) A notary public who recklessly or negligently commits any official misconduct is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000.

(c) Any person who acts as, or otherwise willfully impersonates, a notary public while not lawfully appointed and commissioned to perform notarial acts is guilty of a misdemeanor and, upon conviction, shall be fined not more than $5,000 or confined in jail not more than one year, or both fined and confined.

(d) Any person who unlawfully possesses a notary's official seal or any papers or copies relating to notarial acts, is guilty of a misdemeanor and, upon conviction, shall be fined not more than $1,000.

(e) For the purposes of this section, the term "official misconduct" means any act or conduct that:

(1) May result in the denial, refusal to renew, revocation, suspension or condition commission of a notary public pursuant to section twenty-one of this article; or

(2) Is prohibited by section twenty-three of this article.

WV Legislature

§39-4-34. Action for injunction; unauthorized practice of law.

Upon his or her own information or upon complaint of any person, the Attorney General, or his or her designee, may maintain an action for injunctive relief in circuit court against any notary public who renders, offers to render or holds himself or herself out as rendering any service constituting the unauthorized practice of the law. Any organized bar association in this state may intervene in the action, at any stage of the proceeding, for good cause shown. The action may also be maintained by an organized bar association in this state or by the Secretary of State.

WV Legislature

§39-4-35. Administrative complaints and investigations.

(a) In addition to the powers and duties contained in this article, the Secretary of State may:

(1) Investigate, upon complaint or on his or her own initiative, any alleged violations or irregularities of this article.

(2) Administer oaths and affirmations, issue subpoenas for the attendance of witnesses, issue subpoenas duces tecum to compel the production of books, papers, records and all other evidence necessary to any investigation.

(3) Involve the aid of any circuit court in the execution of its subpoena power.

(4) Report any alleged violations of this article to the appropriate prosecuting attorney having jurisdiction, which prosecuting attorney shall present to the grand jury the alleged violations, together with all evidence relating thereto, no later than the next term of court after receiving the report.

(b) The Attorney General shall, when requested, provide legal and investigative assistance to the Secretary of State.

WV Legislature

§39-4-36. Secretary of State record retention.

(a) The provisions of subsection (c), section three, article two, chapter five of this code notwithstanding, the Secretary of State may destroy original records of appointment under this article after expiration of the term of a notary public: Provided, That the Secretary of State maintains an electronic copy of the appointment for a minimum of ten years after the expiration of the term of the notary public.

(b) The Secretary of State may destroy any original journals of notarial acts in his or her possession: Provided, That an electronic copy is maintained in accordance with the retention rules of the Department of Administration.

WV Legislature

§39-4-37. Remote online notarial act performed for remotely located individual.

(a) In this section:

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

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

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

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

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

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

(5) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection (c) of this section.

(b) A remotely located individual may comply with the provisions of this section by using communication technology to appear before a notary public.

(c) A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

(1) The notary public:

(A) Has personal knowledge of the identity of the individual;

(B) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under §39-4-1 *et seq*. of this code; or

(C) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(2) The notary public is reasonably able to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature;

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(3) The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act; and

(4) For a remotely located individual located outside the United States:

(A) The notary public is commissioned as an Out-of-State Commissioner pursuant to §39-4A-1 *et seq*. of this code; and

(B) The record:

(i) Is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of West Virginia; or

(ii) Involves property located in or a transaction substantially connected with West Virginia.

(d) If a notarial act is performed under this section, the certificate of notarial act required by §39-4-15 of this code and the short-form certificate provided in §39-4-16 of this code must indicate that the notarial act was performed using communication technology.

(e) A short-form certificate provided in §39-4-16 of this code for a notarial act subject to this section is sufficient if it:

(1) Complies with rules adopted under subdivision (1), subsection (h) of this section; or

(2) Is in the form provided in §39-4-16 of this code and contains a statement substantially as follows: "This notarial act involved the use of communication technology".

(f) A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audio-visual recording created under subdivision (3), subsection (c) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subdivision (4), subsection (h) of this section, the recording must be retained for a period of at least five years after the recording is made.

(g) Before a notary public performs the notary public's initial notarial act under this section, the notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the Secretary of State has established standards under subsection (h) of this section for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

(h) The Secretary of State may adopt legislative rules under the provisions of this section regarding performance of a notarial act. The rules may:

(1) Prescribe the means of performing a notarial act involving a remotely located individual

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using communication technology;

(2) Establish standards for communication technology and identity proofing;

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

(4) Establish standards and a period for the retention of an audio-visual recording created under the provisions of this section.

(i) Before adopting, amending, or repealing a legislative rule governing performance of a notarial act with respect to a remotely located individual, the Secretary of State shall consider:

(1) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

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

(3) The views of governmental officials and entities and other interested persons.

(j) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording created under this section, the Secretary of State shall be the provider of the communication technology, identity proofing, or storage as the provider’s agent for service of process in any civil action in this state related to the notarial act.

WV Legislature

§39-4-38. Remote ink notarial act performed for remotely located individual.

(a) A document may be notarized for an individual who is not in the physical presence of the notary public at the time of the notarization if the following requirements are met:

(1) The individual and the notary can communicate simultaneously, in real time, by sight and sound using communication technology defined in §39-4-37 of this code;

(2) In performing a remote notarization pursuant to the provisions of this section, the notary reasonably identifies the individual at the time of notarization by one or more of the following methods:

(A) Personal knowledge of the individual;

(B) The individual presents a government-issued, unexpired identification document or record which includes the individual's photograph, name, and signature. Common acceptable forms of identification documents include, but are not limited to, a driver's license, government-issued identification card, or passport;

(C) At least two different types of processes or services by which a third person provides a means to verify the identity of the individual through a review of public or private data sources; or

(D) Oath or affirmation by a credible witness who:

(i) Is in the physical presence of either the notary or the individual; or

(ii) Is able to communicate in real time with the notary and the individual by sight and sound through an electronic device or process at the time of the notarization, if the credible witness has personal knowledge of the individual and has been reasonably identified by the notary by a method provided in this section.

(b) The notary, either directly or through an agent, shall satisfy the following requirements for generating and retaining a record of a notarization performed pursuant to this section:

(1) At the time of the performance of the notarization, the notary or notary's agent shall create an audio and visual recording of the signing and notarization; and

(2) The notary or notary's agent shall retain the recording as a notarial record for five years unless otherwise provided by law.

(c) When an individual who is physically located outside of the state of West Virginia seeks a remote notarization pursuant to this section, the following additional requirements shall also be met:

(1) The notary must be commissioned as an Out-of-State Commissioner pursuant to §39-4A-1

WV Legislature

et seq. of this code; and

(2) The record being notarized must:

(A) Be intended for filing or presentation in a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of West Virginia;

(B) Involve property located in the territorial jurisdiction of West Virginia or a transaction substantially connected to the state of West Virginia; or

(C) Otherwise not be prohibited, by West Virginia law to be notarized outside the state of West Virginia.

(d) Once signed by the individual according to the procedures set forth in this section, the individual shall mail or otherwise cause to be delivered the signed original copy of the documents to the notary public for certification and execution with the notary's commission signature and official stamp or seal.

(e) The date and time of the notarization shall be the date and time when the notary witnessed the signature being performed via communication technology.

(f) Nothing in this section affects the authority of a notary public to refuse to perform a notarial act or requires a notary to perform a notarization remotely:

(1) With respect to an electronic record;

(2) For an individual not in the physical presence of the notary; or

(3) Using a technology that the notary has not selected.

(g) The Secretary of State may adopt rules under this section regarding performance of a notarial act. The rules may:

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

(2) Establish standards for communication technology and identity proofing;

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

(4) Establish standards and a period for the retention of an audio-visual recording created under this section.

(h) Before adopting, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the Secretary of State shall consider:

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(1) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

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

(3) The views of governmental officials and entities and other interested persons.

(i) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording created under this section, the Secretary of State shall be the provider of the communication technology, identity proofing, or storage as the provider's agent for service of process in any civil action in this state related to the notarial act.

WV Legislature

§39-4A-1. Commissioners out of state; qualifications; application fee.

(a) The Secretary of State may appoint a qualified person residing within or without this state and within the United States, its territories, or possessions as a commissioner to acknowledge signatures performed in or out of this state by persons residing in or out of the state of West Virginia covering deeds, leases, and other writings pertaining to West Virginia property for recordation in the state of West Virginia.

(b) To be qualified for an appointment pursuant to subsection (a) of this section, a person must be commissioned as a notary public pursuant to §39-4-20 of this code.

(c) An individual qualified under subsection (b) of this section may apply to the Secretary of State for a commission and shall comply with and provide the information required by subsection (d) of this section and pay the requisite fee.

(d) Applications for appointment as a commissioner must be made in the form and manner as prescribed by the Secretary of State. The application must include the following information:

(1) Full name;

(2) Date of birth;

(3) Legal residential address;

(4) Employer, if any;

(5) Daytime phone number;

(6) Email address;

(7) Applicant’s signature; and

(8) Any other information deemed necessary by the Secretary of State.

(e) The Secretary of State may deny, refuse to renew, revoke, suspend, or impose a condition on a commission for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a commissioner, including:

(1) Failure to comply with this article;

(2) A fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission submitted to the Secretary of State;

(3) A conviction of the applicant or commissioner for any felony or for a crime involving fraud, dishonesty, or deceit;

(4) A finding against, or admission of liability by, the applicant or commissioner in any legal

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proceeding or disciplinary action based on the applicant's or commissioner's fraud, dishonesty, or deceit;

(5) Failure by the commissioner to discharge any duty required of a commissioner, whether by this article, rules promulgated by the Secretary of State, or any federal or state law;

(6) Use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right, or privilege that the notary does not have;

(7) Revocation, suspension, or refusal or failure to renew the commissioner's commission as a notary public pursuant to §39-4-1 et seq. of this code;

(8) Violation by the commissioner of a rule of the Secretary of State regarding a commissioner; and

(9) Denial, refusal to renew, revocation, suspension, or conditioning of a commission in another state.

(f) Before issuance of a commission, an applicant shall provide at the time of application a statement that he or she solemnly swears or affirms, under penalty of perjury, that the answers to all questions in this application are true, complete, and correct; and, if appointed and commissioned, he or she will perform faithfully, to the best of his or her ability, all acts in accordance with the law.

(g) A nonrefundable fee of $500 for each commission issued shall be paid to the Secretary of State: Provided, That the Secretary of State shall have the authority to refund some or all of the application fee for denials resulting from good-faith mistakes made by applicants.

(h) All fees and moneys collected by the Secretary of State pursuant to the provisions of this section shall be deposited by the Secretary of State as follows:

(1) One-half shall be deposited in the state General Revenue Fund; and

(2) One-half shall be deposited in the service fees and collections account established by §59-1-2 of this code for the operation of the Office of the Secretary of State.

WV Legislature

§39-4A-2. Powers of commissioners; official seals.

(a) Upon approval of a successful application, commissioners shall hold office for 10 years, unless removed by the Secretary of State under the grounds set forth in §39-4A-1(e) of this code.

(b) When any oath may lawfully be administered, or affidavit or deposition taken, within the state, territory or district for which any such commissioner is appointed, to be used in this state, it may be done by the commissioner.

(c) Each commissioner shall have an official seal, which shall be a rubber stamp and shall contain:

(1) The words “Official Seal”;

(2) The words “Commissioner for West Virginia”;

(3) The commissioner’s name exactly as it is written as an official signature;

(4) The city and state of residence of the commissioner; and

(5) The words “My Commission Expires” and the date of expiration of the commission.

(d) Commissioners may take, within or any place out of the State of West Virginia, the acknowledgements of deeds and other writings to be admitted to the record in the State of West Virginia, but each acknowledgement shall reflect where the acknowledgement was taken, including, but not limited to, the state and county or territory.

(e) Every certificate of the commissioner shall be authenticated by his or her signature and official seal.

WV Legislature

§39-4A-3. Prohibited acts.

Commissioners shall refrain from the following prohibited activities:

(1) Assisting persons in drafting legal records, giving legal advice, or otherwise practicing law;

(2) Acting as an immigration consultant or an expert on immigration matters; or

(3) Representing a person in a judicial or administrative proceeding relating to immigration to the United States, United States citizenship, or related matters.

(4) No provision of this section shall be construed to prohibit the practice of law by a duly licensed attorney.

WV Legislature

§39-4A-4. Rulemaking.

The Secretary of State may propose rules for legislative approval to implement this article, in accordance with the provisions of §29A-3-1 et seq. of this code.

WV Legislature

§39-4A-5. Incorporation of Revised Uniform Law on Notarial Acts; online database.

(a) All requirements, duties, prohibitions, penalties, and procedures set forth in §39-4-1 et seq. of this code that are consistent with the foregoing provisions of this article shall apply to commissioners.

(b) The Secretary of State shall include all active commissioners in its database of notaries public set forth in §39-4-22 of this code, which database shall clearly distinguish commissioners from notaries public.

WV Legislature

§39-5-1.

Repealed.

Acts, 2001 Reg. Sess., Ch. 120.

WV Legislature

§39-5-2.

Repealed.

Acts, 2001 Reg. Sess., Ch. 120.

WV Legislature

§39-5-3.

Repealed.

Acts, 2001 Reg. Sess., Ch. 120.

WV Legislature

§39-5-4.

Repealed.

Acts, 2001 Reg. Sess., Ch. 120.

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§39-5-5.

Repealed.

Acts, 2001 Reg. Sess., Ch. 120.

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§39-5-6.

Repealed.

Acts, 2001 Reg. Sess., Ch. 120.

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§39-5-7.

Repealed.

Acts, 2001 Reg. Sess., Ch. 120.

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§39-5-8.

Repealed.

Acts, 2001 Reg. Sess., Ch. 120.

WV Legislature

§39-6-1. Short title.

This article may be cited as the Uniform Electronic Legal Material Act.

WV Legislature

§39-6-2. Definitions.

In this article:

(1) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

(2) “Legal material” means, whether or not in effect:

(A) The West Virginia Constitution;

(B) The Acts of the Legislature;

(C) The Code of West Virginia;

(D) All rules and other materials filed in the State Register; or

(E) The state administrative agency decisions made pursuant to articles four and five, chapter twenty-nine-a of this code.

(3) “Official publisher” means:

(A) For the Constitution of West Virginia, the State Legislature;

(B) For the Acts of the Legislature, the Clerk of the House of Delegates;

(C) For the Code of West Virginia, the State Legislature;

(D) For a rule published in the State Register, the Secretary of State; or

(E) For a state administrative agency decision, that state agency.

(4) “Publish” means to display, present or release to the public, or cause to be displayed, presented or released to the public, by the official publisher.

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

(6) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

WV Legislature

§39-6-3. Applicability.

This article applies to all legal material in an electronic record that is designated as official under section four of this article and is first published electronically on or after the effective date of this article.

WV Legislature

§39-6-4. Legal material in official electronic record.

(a) If an official publisher publishes legal material only in an electronic record, the publisher shall:

(1) Designate the electronic record as official; and

(2) Comply with sections five, seven and eight of this article.

(b) An official publisher that publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the publisher complies with sections five, seven and eight of this article.

WV Legislature

§39-6-5. Authentication of official electronic record.

An official publisher of legal material in an electronic record that is designated as official under section four of this article shall authenticate the record. To authenticate an electronic record, the publisher shall provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

WV Legislature

§39-6-6. Effect of authentication.

(a) Legal material in an electronic record that is authenticated under section five of this article is presumed to be an accurate copy of the legal material.

(b) If another state has adopted a law substantially similar to this article, legal material in an electronic record that is designated as official and authenticated by the official publisher in that state is presumed to be an accurate copy of the legal material.

(c) A party contesting the authentication of legal material in an electronic record authenticated under section five of this article has the burden of proving by a preponderance of the evidence that the record is not authentic.

WV Legislature

§39-6-7. Preservation and security of legal material in official electronic record.

(a) An official publisher of legal material in an electronic record that is or was designated as official under section four shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(b) If legal material is preserved under subsection (a) in an electronic record, the official publisher shall:

(1) Ensure the integrity of the record;

(2) Provide for backup and disaster recovery of the record; and

(3) Ensure the continuing usability of the material.

WV Legislature

§39-6-8. Public access to legal material in official electronic record.

An official publisher of legal material in an electronic record that is required to be preserved under section seven of this article shall ensure that the material is reasonably available for use by the public on a permanent basis at no cost.

WV Legislature

§39-6-9. Standards.

In implementing this article, an official publisher of legal material in an electronic record shall consider:

(1) Standards and practices of other jurisdictions;

(2) The most recent standards regarding authentication of, preservation and security of, and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;

(3) The needs of users of legal material in an electronic record;

(4) The views of governmental officials and entities and other interested persons; and

(5) To the extent practicable, methods and technologies for the authentication of, preservation and security of, and public access to, legal material which are compatible with the methods and technologies used by other official publishers in this state and in other states that have adopted a law substantially similar to this article.

WV Legislature

§39-6-10. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

WV Legislature

§39-6-11. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U. S. C. Section 7001, et seq., but does not modify, limit or supersede Section 101(c) of that act, 15 U. S. C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U. S. C. Section 7003(b).

WV Legislature