

Publications

Client Alert: The Ohio Notary Public Modernization Act

Related Attorneys

Sheila Nolan Gartland

Nicklaus J. Reis

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In December 2018, Governor Kasich signed into law S.B. 263 to, among other things, enact the Notary Public Modernization Act (the Act), which Act became effective on September 20, 2019 (the effective date) with respect to updates to Chapter 147 of the Ohio Revised Code (O.R.C.). While the Act focuses on the implementation of both electronic and online notarization and the standardization and centralization of the notary commission process, it also adds notarial certificate requirements for acknowledgements (for instruments that transfer an interest in real property) and jurats (to be used on sworn statements). As a practical matter, notaries public must comply with new requirements for acknowledgments and jurats added by the Act.

O.R.C. Section 147.542 requires that a “notarial certificate” be completed by notaries public for every notarial act performed. The notarial certificate for an acknowledgment or a jurat shall indicate the type of notarization being performed and shall clearly state that an oath or affirmation was or was not administered to the signer with regard to the notarial act. Please see **Schedule 1** for suggested forms of an acknowledgment notarial certificate and a jurat notarial certificate. Notaries public are tasked with understanding the difference between acknowledgments and jurats and ensuring that the proper form is used on documents which they are notarizing.

Furthermore, the term “acknowledgment” is defined in O.R.C. Section 147.011 to mean a notarial act in which the signer of the notarized document acknowledges all of the following: (i) that the signer has signed the document; (ii) that the signer understands the document; and (iii) that the signer is aware of any consequences of executing the document by signing it.

The Act also includes that an “electronic document” signed in the physical presence of a notary public with an “electronic signature” and notarized with an “electronic seal” shall be considered an original document and provides that county auditors, engineers, and recorders shall accept a document that was executed electronically for purposes of approval, transfer, and recording if such document includes an “authenticator certificate” in the format provided in O.R.C. 147.591(B)(3).

In addition to notarization of electronic documents, the Act permits an “online notary public” to perform an “online notarization” by means of live audio-video communication. In order to be authorized to act as an online notary public, a notary public must submit an application to the Secretary of State. Note that if an electronic document was signed and notarized electronically, or if an online notarization was performed, the notarial certificate must include a statement to that effect. Electronic and online notarizations are subject to significant regulation, and when considering implementation of the same, parties should refer to O.R.C. Sections 147.591, 147.60, 147.61, 147.62, 147.63, 147.631, 147.64, 147.65 and 147.66.

Anyone seeking a new notary public commission after the Effective Date is required to complete a criminal records check, complete an educational program and pass a test administered by an education provider authorized by the Ohio Secretary of State; provided, however, that an attorney seeking a new notary public commission is only required to complete an educational program and is not required to complete a criminal records check or pass a test.