Notice of Proposed Rule

[**DEPARTMENT OF STATE**](https://www.flrules.org/gateway/department.asp?id=1)[**Division of Corporations**](https://www.flrules.org/gateway/organization.asp?id=13)

RULE NO.: RULE TITLE:
[1N-7.001](https://www.flrules.org/gateway/ruleNo.asp?id=1N-7.001): Remote Online Notarization
[1N-7.003](https://www.flrules.org/gateway/ruleNo.asp?id=1N-7.003): Use of Electronic Record and Signature
[1N-7.004](https://www.flrules.org/gateway/ruleNo.asp?id=1N-7.004): Standards for Online Notary Service Providers
PURPOSE AND EFFECT: This rule will provide the policy and procedures to become a remote online notary and the standards that must be utilized when performing remote online notarization.
SUMMARY: Pursuant to Ch. 117, F.S., the Department of State is implementing rules governing the application to become an remote notary public, and the standards that must be met when performing remote online notarization.
SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:
The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of $200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.
The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: Upon completion of a checklist, it was determined that this rule amendment will not have a direct or indirect adverse impact on small businesses.
Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.
RULEMAKING AUTHORITY: [117.295](https://www.flrules.org/gateway/statute.asp?id=117.295), F.S.
LAW IMPLEMENTED: [117.225](https://www.flrules.org/gateway/statute.asp?id=117.225), [117.295](https://www.flrules.org/gateway/statute.asp?id=%20117.295), F.S.
A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:
DATE AND TIME: December 4, 2019 from 2 pm - 5 pm.
PLACE: R.A. Gray Bldg., 500 S. Bronough, Room 307, Tallahassee, FL 32399
Phone: 1-888-585-9008; Conference Call Room #: 913-092-256
THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Carlos A. Rey, carlos.rey@dos.myflorida.com, 500 S. Bronough St., Tallahassee, FL 32399.

THE FULL TEXT OF THE PROPOSED RULE IS:

1N-7.001       Definitions

1N-7.002       Registration

1N-7.003       Use of Electronic Record, Signature, and Seal

1N-7.004       Standards for Online Notary Service Providers

**1N-7.001** **Definitions**

(1)    Words and terms defined in section 117.201, F.S., shall have the same meaning in this chapter. For the purpose of this chapter the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

(a)     “Applicant” means any person applying for a online notary commission pursuant to section 117.225, F.S.

(b)    “Attached to or logically associated with” means the notary’s electronic signature is securely bound to the electronic document in such a manner as to make it impracticable to falsify or alter, without detection, either the signature or the document.

(c)     “Department” means the Florida Department of State.

(d)    “Electronic document” means information that is created, generated, sent, communicated, received, or stored by electronic means.

(e)     “Electronic notarization” and “electronic notarial act” means an official act authorized under section 117.021(1), F.S., using electronic documents and electronic signatures.

(f)      “Electronic Notary System” means a set of applications, programs, hardware, software, or technology designed to enable a notary to perform electronic notarizations.

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

(h)     “Unique to the notary public” means the notary’s electronic signature is attributable solely to the notary public to the exclusion of all other persons.

(i)      “Retained under the online notary public’s sole control” means accessible by and attributable solely to the notary to the exclusion of all other persons and entities, either through being in the direct physical custody of the notary or through being secured with one or more biometric, password, token, or other authentication technologies in an electronic notarization system that meets the performance requirements of sections 117.021(2) and (3), F.S.

(j)      “Tamper-evident technology” means technology that allows a person inspecting a record to determine whether there has been any tampering with the integrity of a certificate of electronic notarial act logically associated with a record or with the attachment or association of the notarial act with that electronic document.

*Rulemaking Authority 117.295, FS. Law Implemented 117.295 FS. History–New 1-20.*

**1N-7.002** **Registration**

(1)    An applicant shall submit form DOC 1N-7 (hyperlink), effective XXXX, herein incorporated by reference.

(2)    The applicant shall:

(a)        Submit a payment registration fee of $10 with their application;

(b)       Have the application form notarized; and

(c)        Submit the application by:

                        i.      U.S. mail;

                      ii.      In person delivery; or

                    iii.      Courier service.

(3)    An applicant’s registration is effective upon filing with the Department and expires on the date of expiration, termination, or resignation of the applicant’s:

(a)     Notary Public commission issued under section 117.01, F.S.;

(b)    Appointment as a civil-law Notary pursuant to section 118.10, F.S., and Ch. 1N-5, F.A.C.; or

(c)     Appointment as a commissioner of deeds pursuant to section 721.97, F.S.

(4)    All qualifications and registration requirements applicable for an applicant’s registration shall apply to a renewal registration.

*Rulemaking Authority 117.295, FS. Law Implemented 117.225 FS. History–New 1-20.*

**1N-7.003** **Use of Electronic Record, Signature, and Seal**

(1)    The online notary public’s electronic record, electronic signature, and electronic seal shall be retained under the online notary public’s sole control. The online notary public may not allow another person to use the online notary public’s electronic record, electronic signature, or electronic seal.

(2)    An online notary public shall attach the online notary public’s electronic signature and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.

*Rulemaking Authority 117.295, FS. Law Implemented 117.295 FS. History–New 1-20.*

**1N-7.004 Standards for Online Notary Service Providers**

(1)    Online notary publics shall utilize remote online notary service providers to facilitate their performance of online notarization.

(2)    The remote online service provider utilized by the online notary publics shall comply with the standards and requirements pursuant to section 117.295, F.S.

(3)    Online notary publics must select tamper-evident technology to perform notarial acts with respect to electronic documents.

*Rulemaking Authority 117.295, FS. Law Implemented 117.295 FS. History–New 1-20.*

NAME OF PERSON ORIGINATING PROPOSED RULE: Carlos A. Rey
NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Laurel M. Lee
DATE PROPOSED RULE APPROVED BY AGENCY HEAD: 11/22/2019
DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: 09/25/2019