

I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
369-35 (COR)	Mary Camacho Torres	AN ACT TO ADD A NEW ARTICLE 10 TO CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE PERFORMANCE OF NOTARIAL ACTS BY A REMOTE ONLINE NOTARY PUBLIC; AND TO FURTHER ADD A NEW ARTICLE 11 TO CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE RECORDING OF AN ELECTRONIC RECORD; AND TO AMEND §33512 OF CHAPTER 33, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO CRIMINAL PROSECUTION OF A NOTARY OFFICE; AND TO ADD A NEW CHAPTER 3 TO TITLE 31, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO IMPLEMENTING RULES FOR REMOTE ONLINE NOTARIZATION.	6/17/20 4:53 p.m.						Exhibit A

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

Bill No. 369-35 (COR)

Introduced by:

Mary Camacho Torres 

AN ACT TO *ADD A NEW* ARTICLE 10 TO CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE PERFORMANCE OF NOTARIAL ACTS BY A REMOTE ONLINE NOTARY PUBLIC; AND TO FURTHER *ADD A NEW* ARTICLE 11 TO CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE RECORDING OF AN ELECTRONIC RECORD; AND TO *AMEND* §33512 OF CHAPTER 33, TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO CRIMINAL PROSECUTION OF A NOTARY OFFICE; AND TO *ADD* A NEW CHAPTER 3 TO TITLE 31, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO IMPLEMENTING RULES FOR REMOTE ONLINE NOTARIZATION.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

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

4 **“ARTICLE 10**

5 **REMOTE ONLINE NOTARIZATION**

6
7 **§ 33801. Definitions.**

8 **§ 33802. Standards for Remote Online Notarization.**

1 **§ 33803. Registration Required.**

2 **§ 33804. Authority to Perform Remote Online Notarizations.**

3 **§ 33805. Electronic Record of Remote Online Notarizations.**

4 **§ 33806. Use of Electronic Journal, Signature, And Seal.**

5 **§ 33807. Remote Online Notarization Procedures.**

6 **§ 33808. Fees for Remote Online Notarization.**

7 **§ 33809. Termination of Remote Online Notary Public’s Commission.**

8 **§ 33810. Wrongful Possession of Software or Hardware; Criminal**

9 **Offense.**

10 **§ 33811. Conflict**

11
12 **§ 33801. Definitions.**

13 As used in this Article,

14 (a) “Appear” or “personally appear” or “in the presence of” means:

15 (1) being in the same physical location as another person and close
16 enough to see, hear, communicate with, and exchange tangible identification
17 credentials with that individual; or

18 (2) interacting with another individual by means of communication
19 technology that complies with the provisions of this Chapter.

20 (b) “Communication technology” means an electronic device or process
21 that allows a notary public physically located in Guam and a remotely located
22 individual to communicate with each other simultaneously by sight and sound, and
23 which, as necessary, makes reasonable accommodations for individuals with vision,
24 hearing, or speech impairments.

25 (c) “Credential analysis” means a process or service that meets the
26 standards established by the Attorney General of Guam through which a third person

1 affirms the validity of a government-issued identification credential through review
2 of public and proprietary data sources.

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

5 (e) “Electronic record” means information that is created, generated, sent,
6 communicated, received, or stored by electronic means.

7 (f) “Electronic seal” means information within a notarized electronic
8 record that confirms the remote online notary public’s name, jurisdiction, identifying
9 number, and commission expiration date and generally corresponds to information
10 in notary seals used on paper documents.

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

14 (h) “Identity proofing” means a process or service operating according to
15 standards established by the Attorney General of Guam through which a third person
16 affirms the identity of an individual:

17 (1) by means of dynamic knowledge-based authentication such as a
18 review of personal information from public or proprietary data sources; or

19 (2) by means of analysis of biometric data such as, but not limited
20 to, facial recognition, voiceprint analysis, or fingerprint analysis,

21 (i) “Notarial act” means an act, whether performed with respect to a
22 tangible or electronic record, that a notarial officer may perform under Guam law.
23 The term includes taking an acknowledgment, administering an oath or affirmation,
24 taking a verification on oath or affirmation, witnessing or attesting a signature, and
25 certifying or attesting a copy.

26 (j) “Outside the United States” means outside the geographic boundaries
27 of a state or commonwealth of the United States, the District of Columbia, Puerto

1 Rico, the United States Virgin Islands, and any territory or insular possession subject
2 to the jurisdiction of the United States.

3 (k) “Principal” means an individual:

4 (1) whose electronic signature is notarized in a remote online
5 notarization; or

6 (2) making an oath or affirmation or an acknowledgement other than
7 in the capacity of a witness for the remote online notarization.

8 (l) “Remote online notarial certificate” is the form of an
9 acknowledgement; jurat, verification on oath or affirmation, or verification of
10 witness or attestation that is completed by a remote online notary public and:

11 (1) contains the online notary public’s electronic signature,
12 electronic seal, title, and commission expiration date;

13 (2) contains other required information concerning the date and
14 place of the remote online notarization; and

15 (3) otherwise conforms to the requirements for an
16 acknowledgement, jurat, verification on oath or affirmation, or verification of
17 witness or attestation under Guam law; and

18 (4) indicates that the person making the acknowledgement, oath or
19 affirmation appeared remotely online.

20 (m) “Remote online notarization” or “remote online notarial act” means a
21 notarial act performed by means of communication technology that meets the
22 standards adopted under this Article.

23 (n) “Remote online notary public” means a notary public who has been
24 authorized by the Attorney General of Guam to perform remote online notarizations
25 under this Article.

26 (o) “Remote presentation” means transmission to the remote online notary
27 public through communication technology of an image of a government-issued

1 identification credential that is of sufficient quality to enable the remote online
2 notary public to:

3 (1) identify the individual seeking the remote online notary public's
4 services; and

5 (2) perform credential analysis.

6 (p) “Remotely located individual” means an individual who is not in the
7 physical presence of the notary.

8 **§ 33802. Standards for Remote Online Notarization.** The Attorney
9 General of Guam shall maintain standards for remote online notarization in
10 accordance with the Rules for Remote Online Notarization, pursuant to Chapter 3
11 Title 31, Guam Administrative Rules and Regulations.

12 **§ 33803. Registration Required.**

13 (a) A notary public commissioned in Guam may become a remote online
14 notary public in accordance with this Section. Before a notary performs a remote
15 online notarization, he or she must apply with the Office of the Attorney General of
16 Guam in accordance with the Rules for Remote Online Notarization and identify the
17 technology that the electronic notary public intends to use, which must conform to
18 the Rules for Remote Online Notarization.

19 (b) Before each registration to perform electronic notarial acts, an
20 individual shall complete a course of instruction as approved by the Attorney
21 General and pass an examination based on the course. The content of the course shall
22 include notarial rules, procedures, and ethical obligations pertaining to electronic
23 notarization in this Chapter. The course may be taken in conjunction with any course
24 required by the Attorney General.

25 (c) Unless terminated pursuant to this Chapter, the term of registration to
26 perform electronic notarial acts shall begin on the registration starting date set by the

1 Attorney General and shall continue as long as the notary public's current
2 commission remains valid.

3 (d) An individual registering to perform electronic notarial acts shall
4 submit to the Attorney General an application in a format prescribed by the Attorney
5 General which includes:

6 (1) proof of successful completion of the course and examination
7 required under subsection (b);

8 (2) disclosure of any and all license or commission revocations or
9 other disciplinary actions against the registrant;

10 (3) any other information, evidence, or declaration required by the
11 Attorney General of Guam; and

12 (4) evidence that the surety bond prescribed by this Chapter for
13 performance of electronic notarial acts by communication technology has
14 been issued.

15 (e) Upon the applicant's fulfillment of the requirements for registration
16 under this Article, the Attorney General of Guam shall approve the registration and
17 issue to the applicant a unique registration number.

18 (f) The Attorney General of Guam may reject a registration application if
19 the applicant fails to comply with any section of this Article.

20 **§ 33804. Authority to Perform Remote Online Notarizations.** A remote
21 online notary public physically located in Guam may perform a remote online
22 notarial act using communication technology in accordance with this Article and the
23 Rules for Remote Online Notarization for a remotely located individual who is
24 physically located:

25 (a) In Guam;

26 (b) Outside Guam but within the United States; or

27 (c) Outside the United States if:

1 (1) The remote online notary public has no actual knowledge that the
2 act of making the statement or signing the record is prohibited in the
3 jurisdiction in which the person is located; and

4 (2) The person placing his or her electronic signature on the
5 electronic record confirms to the remote online notary public that the
6 requested remote online notarial act and the electronic record:

7 (A) are part of or pertain to a matter that is to be filed with or
8 is currently before a court, governmental entity or other entity in the
9 United States;

10 (B) relates to property located in the United States; or

11 (C) relates to a transaction substantially connected to the
12 United States.

13 **§ 33805. Electronic Record of Remote Online Notarizations.**

14 (a) A remote online notary public shall keep a secure electronic journal of
15 each remote online notarial act performed by the remote online notary public. The
16 electronic journal must contain for each remote online notarization:

17 (1) the date and time of the notarization;

18 (2) the type of notarial act;

19 (3) the type, the title, or a description of the electronic record or
20 proceeding;

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

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

25 (A) a statement that the person is personally known to the
26 remote online notary public;

1 (B) a notation of the type of identification document provided
2 to the remote online notary public;

3 (C) a record of the identity verification made under this
4 Article, if applicable or

5 (D) the following:

6 (i) the printed name and address of each credible
7 witness swearing to or affirming the person's identity; and

8 (ii) for each credible witness not personally known to
9 the remote online notary public, a description of the type of
10 identification documents provided to the remote online notary
11 public; and

12 (6) the fee, if any, charged for the notarization.

13 (b) The remote online notary public shall create an audio and video copy
14 of the performance of the notarial act.

15 (c) The remote online notary public shall take reasonable steps to:

16 (1) insure the integrity, security, and authenticity of remote online
17 notarizations;

18 (2) maintain a backup for the electronic journal required by
19 Subsection (a) and the recording required by Subsection (b); and

20 (3) protect the backup record from unauthorized use.

21 (d) The electronic journal required by Subsection (a) and the recording
22 required by Subsection (b) shall be maintained for at least ten (10) years after the
23 date of the transaction or proceeding.

24 (1) The remote online notary public may designate as custodian of
25 the recording and the electronic journal:

1 (A) the employer of the remote online notary public if
2 evidenced by a record signed by the remote online notary public and
3 the employer; or

4 (B) a repository meeting the standards established by the
5 Attorney General of Guam.

6 (2) The Attorney General of Guam shall establish:

7 (i) standards for the retention of a video and audio copy of the
8 performance of the notarial act;

9 (ii) procedures for preservation of the audio and video copy
10 and the electronic journal if the remote online notary public dies or is
11 adjudicated incompetent or if the remote online notary public's
12 commission or authority to perform notarial acts is otherwise
13 terminated; and

14 (iii) standards for third party repositories for the retention of
15 the audio and video copy of the performance of the notarial act.

16 **§ 33806. Use of Electronic Journal, Signature, and Seal.**

17 (a) A remote online notary public shall keep the remote online notary
18 public's electronic journal, electronic signature, and electronic seal secure. The
19 remote online notary public may not allow another person to use the remote online
20 notary public's electronic signature or electronic seal.

21 (b) A remote online notary public shall attach the remote online notary
22 public's electronic signature and seal to the remote online notarial certificate of an
23 electronic record in a manner that renders any subsequent change or modification to
24 the electronic record to be evident.

25 (c) A remote online notary public shall immediately notify law
26 enforcement and the Attorney General of Guam of the theft or vandalism of the
27 remote online notary public's electronic journal, electronic signature, or electronic

1 seal. A remote online notary public shall immediately notify the Attorney General
2 of Guam of the loss or use by another person of the remote online notary public’s
3 electronic journal, electronic signature, or electronic seal.

4 **§ 33807. Remote Online Notarization Procedures.**

5 (a) A remote online notary public may perform a remote online
6 notarization authorized under this Article that meets the requirements of this Article
7 and Rules for Remote Online Notarization regardless of whether the principal is
8 physically located in Guam at the time of the remote online notarization.

9 (b) In performing a remote online notarization, a remote online notary
10 public shall verify the identity of a person creating an electronic signature at the time
11 that the signature is taken by using communication technology that meets the
12 requirements of this Article and Rules for Remote Online Notarization. Identity may
13 be verified by:

14 (1) the remote online notary public’s personal knowledge of the
15 person creating the electronic signature; or

16 (2) each of the following:

17 (A) remote presentation by the person creating the electronic
18 signature of a government-issued identification credential, including a
19 passport or driver’s license, that contains the signature and a
20 photograph of the person:

21 (B) credential analysis; and

22 (C) identity proofing.

23 (c) The remote online notary public shall take reasonable steps to ensure
24 that the communication technology used in a remote online notarization is secure
25 from unauthorized interception.

1 (d) The remote online notarial certificate for a remote online notarization
2 must state that the person making the acknowledgement or making the oath appeared
3 remotely online.

4 (e) A remote online notarial act meeting the requirements of this Article
5 satisfies the requirement of Guam law relating to a notarial act that requires a
6 principal to appear or personally appear before a notary or that the notarial act be
7 performed in the presence of a notary.

8 **§ 33808. Fees for Remote Online Notarization.**

9 A remote online notary public or the remote online notary public's employer
10 may charge a fee for performance of remote online notarization.

11 **§ 33809. Termination of Remote Online Notary Public's Commission.**

12 (a) Except as provided by Subsection (b), a remote online notary public
13 whose commission terminates shall destroy the coding, disk, certificate, card,
14 software, or password that enables electronic affixation of the remote online notary
15 public's official electronic signature or seal. The remote online notary public shall
16 certify compliance with this subsection to the Attorney General of Guam.

17 (b) A former remote online notary public whose commission terminated
18 for a reason other than revocation or a denial of renewal is not required to destroy
19 the items described by Subsection (a) if the former remote online notary public is
20 recommissioned as a remote online notary public with the same electronic signature
21 and seal within three (3) months after the former remote online notary public's
22 former commission terminated.

23 **§ 33810. Wrongful Possession of Software or Hardware; Criminal**
24 **Offense.**

25 (a) A person who, without authorization, knowingly obtains, conceals,
26 damages, or destroys the certificate, disk, coding, card, program, software or

1 hardware enabling a remote online notary public to affix an official electronic
2 signature or seal commits an offense.

3 (b) An offense under this Section is a third degree felony.

4 **§ 33811. Conflict.** In the event of a conflict between the provisions of
5 this Article and any other law in Guam, the provisions of this Article shall control.”

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

8 **“ARTICLE 11**

9 **ELECTRONIC RECORDING AUTHORIZATION**

10 **§ 33901. Recording of an Electronic Record.**

11 (a) If a law requires, as a condition for recording, that a document be an
12 original, be on paper or another tangible medium, or be in writing, the requirement
13 is satisfied by paper copy of an electronic record that complies with the requirements
14 of this Chapter.

15 (b) If a law requires, as a condition for recording, that a document be
16 signed, the requirement is satisfied by an electronic signature.

17 (c) A requirement that a document or a signature associated with a
18 document be notarized, acknowledged, verified, witnessed, or made under oath is
19 satisfied if the electronic signature of the person authorized to perform that act, and
20 all other information required to be included, is attached to or logically associated
21 with the document or signature. A physical or electronic image of a stamp,
22 impression, or seal need not accompany an electronic signature if the notary has
23 attached an electronic notarial certificate that meets the requirements of this
24 Chapter.”

25 **Section 3.** § 33512 of Chapter 33, Title 5, Guam Code Annotated is hereby
26 *amended* to read:

1 **“§ 33512. Criminal Prosecution.** A notary who knowingly and repeatedly
2 performs or fails to perform any act prohibited or mandated respectively by this
3 Chapter is guilty of a third degree felony. Except as authorized under Article 10 of
4 this Chapter, A a notary who knowingly performs a notarization for a person who
5 does not appear before the notary or at the notary’s office is guilty of a third degree
6 felony.”

7 **Section 4. Rules and Regulations Adopted.** The rules and regulations,
8 entitled “RULES FOR REMOTE ONLINE NOTARIZATION,” and attached hereto
9 as “EXHIBIT A,” are hereby adopted by *I Liheslaturan Guåhan*, and the Guam
10 Compiler of Laws *shall* codify the same as Chapter 3 of Title 31, Guam
11 Administrative Rules and Regulations.

12 **Section 5. Effective Date.** This Act *shall* be effective upon enactment.

13 **Section 6. Severability.** If any provision of this Act or its application to any
14 person or circumstance is held invalid, the invalidity does not affect other provisions
15 or applications of this Act which can be given effect without the invalid provision
16 or application, and to this end the provisions of this Act are severable.

EXHIBIT A

1 **CHAPTER 3**

2 **RULES FOR REMOTE ONLINE NOTARIZATION**

3
4 **§ 3101. Online Notarization.**

5 **§ 3102. Application for Online Notary Public Commission; Renewal.**

6 **§ 3103. Performance of Notarial Acts.**

7 **§ 3104. Electronic Signature and Seal.**

8 **§ 3105. Standards for Online Notarization.**

9 **§ 3106. Fees.**

10 **§ 3107. Changes After Commissioning.**

11 **§ 3108. Termination of Commission.**

12
13 **§ 3101. Online Notarization.**

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

20 (b) The terms used herein shall have the same definitions prescribed in
21 §33801 of Article 10, Chapter 33 of Title 5, Guam Code Annotated. These Rules
22 pertain to online notarizations as defined and used throughout Article 10, Chapter
23 33 of Title 5, Guam Code Annotated.

24 **§ 3102. Application for Online Notary Public Commission; Renewal.**

25 (a) A person who has been previously commissioned as a notary public by
26 the Attorney General of Guam, or meets the qualification requirements for
27 commissioning as a notary public as outlined in Chapter 33 of Title 5, Guam Code

1 Annotated may submit an application for commissioning as an online notary public
2 by submitting to the Office of the Attorney General of Guam the prescribed
3 application form including the following information:

4 (1) The applicant's legal name;

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

9 (3) A valid email address for the applicant;

10 (4) A valid telephone number for the applicant;

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

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

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

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

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

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

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

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

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

8 (14) A certification confirming that the applicant will comply with the
9 following standards prescribed by the Attorney General; and

10 (15) An application fee of One Hundred Dollars (\$100.00). All fees
11 shall be deposited into the Notary Public Revolving Fund and used according
12 to § 33106 of Chapter 33, Title 5, Guam Code Annotated.

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

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

26 **§ 3103. Performance of Notarial Acts.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (1) The date and time of the notarization;

10 (2) The type of notarial act;

11 (3) The type, the title, or a description of the electronic document or
12 proceeding;

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

15 (5) Evidence of the identity of each principal involved in the
16 transaction or proceeding in the form of:

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

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

21 (C) A notation that the principal(s) completed identity
22 proofing and credential analysis procedures described by § 3105 of
23 these Rules and both were satisfactory to verify the identity of the
24 principal(s);

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

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

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

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

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

21 (l) Records of an online notarization shall be retained, in a safe and secure
22 manner, for ten (10) years following the date of the notarization. An online notary
23 public must also maintain a backup of the electronic records for the same period of
24 time. Both the original records and the backup shall be protected from unauthorized
25 use. An online notary public may elect to store such recordings with a custodian or
26 repository and such recordings may be stored separately from the journal as long as

1 the corresponding journal entry cross-references the place of storage and describes
2 the manner in which the record is stored.

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

8 **§ 3104. Electronic Signature and Seal.**

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

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

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

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

1 (e) The online notary public must use technology from a third-party
2 provider who has provided the online notary public with evidence of its ability to
3 provide an electronic technology standard that utilizes Public Key Infrastructure
4 (PKI) technology from a PKI service provider that is X.509 compliant.

5 (f) The electronic notarial certificate for an online notarization must
6 contain a notation that the notarization is an online notarization, which may be
7 satisfied by affixing the online notary public’s seal to the electronic notarial
8 certificate. The acknowledgment contained within the electronic notarial certificate
9 must also contain a statement that the principal “personally appeared before me by
10 audio-video communication” or “personally appeared by audio-video
11 communication” or “before me appeared by audio-video communication.”

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

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

23 **§ 3105. Standards for Online Notarization.**

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

1 (b) Requirements for Credential Analysis. A credential is a non-military
2 identification card or other document issued by the United States government, any
3 state government, or a passport issued by a foreign government that has been
4 stamped by the United States immigration and naturalization service. In order to be
5 valid, the credential must also be unexpired and contain the photograph and
6 signature of the principal. Credential analysis is the process by which the validity of
7 a non-military government-issued identification credential is verified. Credential
8 analysis is performed utilizing public and proprietary data sources to verify the
9 credential presented by the principal. Credential analysis shall, at a minimum:

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

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

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

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

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

22 (D) Provide output of the authenticity test to the online notary
23 public; and

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

1 (c) Requirements for Identity Proofing. Identity proofing is the process by
2 which the identity of an individual is affirmed by a third party through review of
3 public and proprietary data sources. Identity proofing is performed through dynamic
4 Knowledge Based Authentication (KBA) which meets the following requirements:

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

8 (2) Each question must have a minimum of five (5) possible answer
9 choices;

10 (3) At least eighty percent (80%) of questions must be answered
11 correctly;

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

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

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

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

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

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

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

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

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

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

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

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

16 (7) Provide reasonable security measures to prevent unauthorized
17 access to:

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

19 (B) A recording of the audio-video communication;

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

22 (D) The electronic documents presented for online
23 notarization.

24 **§ 3106. Fees.** An online notary public, or the online notary public's
25 employer, may charge a fee that does not exceed Twenty-Five Dollars (\$25.00) for
26 performing each online notarization.

27 **§ 3107. Changes after Commissioning.**

1 (a) An online notary public who changes his or her address, such that the
2 online notary public no longer qualifies for either a traditional notary public
3 commission or an online notary public commission, vacates the office of online
4 notary public and must surrender the online notary public commission to the
5 Attorney General of Guam.

6 (b) An online notary public who replaces or changes an electronic notarial
7 certificate or electronic seal during the term of the online notary public commission
8 must provide an updated copy of the electronic notarial certificate or electronic seal
9 to the Attorney General prior to conducting any notarial acts using the updated
10 electronic notarial certificate or electronic seal.

11 (c) If at any time during the term of the online notary commission the
12 online notary public elects to use a new vendor or technology or technologies to be
13 used in attaching or logically associating an electronic notarial certificate, signature,
14 and seal to an electronic document, the online notary public must provide to the
15 Attorney General the name of the vendor and electronic technology or technologies
16 to be used in attaching or logically associating an electronic notarial certificate,
17 signature, and seal to an electronic document and a copy of any necessary
18 instructions or techniques supplied by the vendor that allow the online notary
19 public's electronic signature and seal to be read and authenticated prior to
20 conducting any notarial acts using the new vendor or technology or technologies.

21 (d) If at any time during the term of the online notary public commission
22 the online notary public elects to use a new vendor or technology or technologies to
23 be used in conducting identity proofing and credential analysis, the online notary
24 public must provide to the Attorney General the name of the vendor and electronic
25 technology or technologies to be used in conducting identity proofing and credential
26 analysis and a copy of any necessary instructions or techniques supplied by the
27 vendor that allow the online notary public to conduct identity proofing and credential

1 analysis prior to conducting any notarial acts using the new vendor or technology or
2 technologies.

3 **§ 3108. Termination of Commission.** If the Attorney General of Guam
4 determines that any online notary public has not complied with these regulations or
5 the provisions of Chapter 33 of Title 5, Guam Code Annotated related to online
6 notarization, the Attorney General shall terminate the commission of the online
7 notary public.”