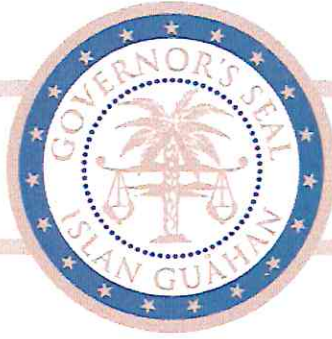


I Mina'trentai Singko Na Liheslaturan Guåhan
BILL STATUS

BILL NO.	SPONSOR	TITLE	DATE INTRODUCED	DATE REFERRED	CMTE REFERRED	PUBLIC HEARING DATE	DATE COMMITTEE REPORT FILED	FISCAL NOTES	NOTES
369-35 (COR) As amended by the Committee on General Government Operations, Appropriations, and Housing; and further amended on the Floor	Mary Camacho Torres Tina Rose Muña Barnes	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 ARTICLE 3 TO CHAPTER 1 OF TITLE 19, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO IMPLEMENTING RULES FOR REMOTE ONLINE NOTARIZATION.	6/17/20 4:53 p.m.	7/27/20	Committee on General Government Operations, Appropriations, and Housing	9/29/20 9:00 a.m.	10/13/20 5:55 p.m.	Request: 7/27/20 7/29/20	Exhibit A
	SESSION DATE	TITLE	DATE PASSED	TRANSMITTED	DUE DATE	PUBLIC LAW NO.	DATE SIGNED	NOTES	
10/12/20	AN ACT TO ADD NEW ARTICLES 10 AND 11 TO CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE PERFORMANCE OF NOTARIAL ACTS BY A REMOTE ONLINE NOTARY PUBLIC, AND AUTHORIZING THE RECORDING OF AN ELECTRONIC RECORD; TO AMEND § 33512 OF PART 2, ARTICLE 6, CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO CRIMINAL PROSECUTION OF A NOTARY OFFICE; AND TO ADD A NEW ARTICLE 3 TO CHAPTER 1 OF TITLE 19, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO IMPLEMENTING THE RULES FOR REMOTE ONLINE NOTARIZATION.	10/19/20	10/19/20	10/30/20	35-100	10/29/20	Received: 10/30/20 Mess and Comm. Doc. No. 35GL-20-2387.		

LOURDES A. LEON GUERRERO
MAGA'HAGA • GOVERNOR



JOSHUA F. TENORIO
SIGUNDO MAGA'LÄHI • LIEUTENANT GOVERNOR

October 29, 2020

HONORABLE TINA ROSE MUÑA BARNES

Speaker

I Mina'trentai Singko Na Liheslaturan Guåhan

35th Guam Legislature

Guam Congress Building

163 Chalan Santo Papa

Hagåtña, Guam 96910

35GL-20-2387
Speaker Tina Rose Muña Barnes

OCT 30 2020
Time 6:41 (AM/PM)
Received By: *e. Chupac*

Re: Bill No. 369-35 (COR) - An Act to Add New Articles 10 and 11 to Chapter 33 of Title 5, Guam Code Annotated, Relative to Authorizing the Performance of Notarial Acts by a Remote Online Notary Public, and Authorizing the Recording of an Electronic Record; to Amend § 33512 of Part 2, Article 6, Chapter 33 of Title 5, Guam Code Annotated, Relative to Criminal Prosecution of a Notary Office; and to Add a New Article 3 to Chapter 1 of Title 19, Guam Administrative Rules and Regulations, Relative to Implementing the Rules for Remote Online Notarization

Dear Madame Speaker:

On July 20, 2020, in recognition of the need to facilitate economic activity while mitigating against the potential spread of COVID-19, I issued Executive Order No. 2020-25 which suspended provisions of Guam law that mandated notarial acts occur in the physical presence of a notary public. Additionally, Executive Order No. 2020-25 suspended the application of the Administrative Adjudication Law for the limited purpose of providing for the expedient adoption of the implementation of Rules for Remote Online Notarization.

While the provisions of Executive Order No. 2020-25 are intended to be temporary in nature to address our current circumstances, it has become apparent that our laws must be modernized to accommodate the nature of business and economic activities today. Bill No. 369-35, which I have signed into law as **Public Law No. 35-100**, is an important step toward ensuring that we have all the necessary tools to reenergize our economy once we have overcome the COVID-19 public health emergency.

Senseramente,

LOURDES A. LEON GUERRERO

I Maga'hagan Guåhan

Governor of Guam

Enclosure: Bill No. 369-35 (COR) *nka P.L. 35-100*

cc via email: *Sigundo Maga'låhen Guåhan*

Compiler of Laws

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

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'HÅGAN GUÅHAN*

This is to certify that **Bill No. 369-35 (COR)**, “AN ACT TO *ADD* NEW ARTICLES 10 AND 11 TO CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE PERFORMANCE OF NOTARIAL ACTS BY A REMOTE ONLINE NOTARY PUBLIC, AND AUTHORIZING THE RECORDING OF AN ELECTRONIC RECORD; TO *AMEND* § 33512 OF PART 2, ARTICLE 6, CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO CRIMINAL PROSECUTION OF A NOTARY OFFICE; AND TO *ADD* A NEW ARTICLE 3 TO CHAPTER 1 OF TITLE 19, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO IMPLEMENTING THE RULES FOR REMOTE ONLINE NOTARIZATION,” was on the 19th day of October 2020, duly and regularly passed.



Tina Rose Muña Barnes
Speaker

Attested:



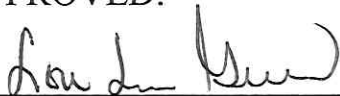
Amanda L. Shelton
Legislative Secretary

This Act was received by *I Maga'hågan Guåhan* this 19th day of October,
2020, at 5:41 o'clock P.M.



Assistant Staff Officer
Maga'håga's Office

APPROVED:



Lourdes A. Leon Guerrero
I Maga'hågan Guåhan

Date: 10/29/2020

Public Law No. 35-100

Jessica Cruz
ROAD ST CENTRAL FILE
OCT 19 '20 PMS/KI
2020-11980

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

Bill No. 369-35 (COR)

As amended by the Committee on General Government
Operations, Appropriations, and Housing;
and further amended on the Floor.

Introduced by:

Mary Camacho Torres
Tina Rose Muña Barnes
William M. Castro
Régine Biscoe Lee
Kelly Marsh (Taitano), PhD
James C. Moylan
Louise B. Muña
Telena Cruz Nelson
Sabina Flores Perez
Clynton E. Ridgell
Joe S. San Agustin
Amanda L. Shelton
Telo T. Taitague
Jose "Pedo" Terlaje
Therese M. Terlaje

AN ACT TO *ADD* NEW ARTICLES 10 AND 11 TO CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO AUTHORIZING THE PERFORMANCE OF NOTARIAL ACTS BY A REMOTE ONLINE NOTARY PUBLIC, AND AUTHORIZING THE RECORDING OF AN ELECTRONIC RECORD; TO *AMEND* § 33512 OF PART 2, ARTICLE 6, CHAPTER 33 OF TITLE 5, GUAM CODE ANNOTATED, RELATIVE TO CRIMINAL PROSECUTION OF A NOTARY OFFICE; AND TO *ADD* A NEW ARTICLE 3 TO CHAPTER 1 OF TITLE 19, GUAM ADMINISTRATIVE RULES AND REGULATIONS, RELATIVE TO IMPLEMENTING THE 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 § 33801. Definitions.

7 § 33802. Standards for Remote Online Notarization.

8 § 33803. Registration Required.

9 § 33804. Authority to Perform Remote Online Notarizations.

10 § 33805. Electronic Record of Remote Online Notarizations.

11 § 33806. Use of Electronic Journal, Signature, And Seal.

12 § 33807. Remote Online Notarization Procedures.

13 § 33808. Fees for Remote Online Notarization.

14 § 33809. Termination of Remote Online Notary Public’s Commission.

15 § 33810. Wrongful Possession of Software or Hardware; Criminal
16 Offense.

17 § 33811. Conflict.

18 **§ 33801. Definitions.**

19 As used in this Article:

20 (a) *Appear, or personally appear, or in the presence of* means:

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

24 (2) interacting with another individual by means of
25 communication technology that complies with the provisions of this
26 Chapter.

1 (b) *Communication technology* means an electronic device or
2 process that allows a notary public physically located in Guam and a remotely
3 located individual to communicate with each other simultaneously by sight
4 and sound, and which, as necessary, makes reasonable accommodations for
5 individuals with vision, hearing, or speech impairments.

6 (c) *Credential analysis* means a process or service that meets the
7 standards established by the Attorney General of Guam through which a third
8 person affirms the validity of a government-issued identification credential
9 through review of public and proprietary data sources.

10 (d) *Electronic* means relating to technology having electrical,
11 digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

12 (e) *Electronic record* means information that is created, generated,
13 sent, communicated, received, or stored by electronic means.

14 (f) *Electronic seal* means information within a notarized electronic
15 record that confirms the remote online notary public's name, jurisdiction,
16 identifying number and commission expiration date, and generally
17 corresponds to information in notary seals used on paper documents.

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

22 (h) *Identity proofing* means a process or service operating according
23 to standards established by the Attorney General of Guam through which a
24 third person affirms the identity of an individual:

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

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

4 (i) *Notarial act* means an act, whether performed with respect to a
5 tangible or electronic record, that a notarial officer may perform under Guam
6 law. The term includes taking an acknowledgment, administering an oath or
7 affirmation, taking a verification on oath or affirmation, witnessing or
8 attesting a signature, and certifying or attesting a copy.

9 (j) *Outside the United States* means outside the geographic
10 boundaries of Guam, a state of the United States, the District of Columbia, or
11 any other territory, commonwealth, or insular possession subject to the
12 jurisdiction of the United States.

13 (k) *Principal* means an individual:

14 (1) whose electronic signature is notarized in a remote online
15 notarization; or

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

19 (l) *Remote online notarial certificate* is the form of an
20 acknowledgement, jurat, verification on oath or affirmation, or verification of
21 witness or attestation that is completed by a remote online notary public and:

22 (1) contains the online notary public's electronic signature,
23 electronic seal, title, and commission expiration date;

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

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

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

6 (m) *Remote online notarization* or *remote online notarial act* means
7 a notarial act performed by means of communication technology that meets
8 the standards adopted under this Article.

9 (n) *Remote online notary public* means a notary public who has been
10 authorized by the Attorney General of Guam to perform remote online
11 notarizations under this Article.

12 (o) *Remote presentation* means transmission to the remote online
13 notary public through communication technology of an image of a
14 government-issued identification credential that is of sufficient quality to
15 enable the remote online notary public to:

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

18 (2) perform credential analysis.

19 (p) *Remotely located individual* means an individual who is not in
20 the physical presence of the notary.

21 **§ 33802. Standards for Remote Online Notarization.**

22 The Attorney General of Guam shall maintain standards for remote online
23 notarization in accordance with the Rules for Remote Online Notarization, pursuant
24 to Article 3 of Chapter 1, Title 19, Guam Administrative Rules and Regulations.

25 **§ 33803. Registration Required.**

26 (a) A notary public commissioned in Guam may become a remote online
27 notary public in accordance with this Section. Before a notary performs a remote

1 online notarization, he or she must apply with the Office of the Attorney General of
2 Guam in accordance with the Rules for Remote Online Notarization and identify the
3 technology that the electronic notary public intends to use, which must conform to
4 the Rules for Remote Online Notarization.

5 (b) Before each registration to perform electronic notarial acts, an
6 individual shall complete a course of instruction as approved by the Attorney
7 General of Guam and pass an examination based on the course. The content of the
8 course shall include notarial rules, procedures, and ethical obligations pertaining to
9 electronic notarization in this Chapter. The course may be taken in conjunction with
10 any course required by the Attorney General of Guam.

11 (c) Unless terminated pursuant to this Chapter, the term of registration to
12 perform electronic notarial acts shall begin on the registration starting date set by the
13 Attorney General of Guam and shall continue as long as the notary public's current
14 commission remains valid.

15 (d) An individual registering to perform electronic notarial acts shall
16 submit to the Attorney General of Guam an application in a format prescribed by the
17 Attorney General which includes:

18 (1) proof of successful completion of the course and examination
19 required under Subsection (b) of this Section;

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

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

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

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

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

6 **§ 33804. Authority to Perform Remote Online Notarizations.**

7 A remote online notary public physically located in Guam may perform a
8 remote online notarial act using communication technology in accordance with this
9 Article and the Rules for Remote Online Notarization for a remotely located
10 individual who is physically located:

11 (a) in Guam;

12 (b) outside Guam but within the United States; or

13 (c) outside the United States if:

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

17 (2) the person placing his or her electronic signature on the
18 electronic record confirms to the remote online notary public that the
19 requested remote online notarial act and the electronic record:

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

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

24 (C) relates to a transaction substantially connected to
25 the United States.

26 **§ 33805. Electronic Record of Remote Online Notarizations.**

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

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

5 (2) the type of notarial act;

6 (3) the type, the title, or a description of the electronic record or
7 proceeding;

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

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

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

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

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

18 (D) the following:

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

21 (ii) for each credible witness not personally known to
22 the remote online notary public, a description of the type of
23 identification documents provided to the remote online notary
24 public; and

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

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

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

2 (1) ensure the integrity, security, and authenticity of remote online
3 notarizations;

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

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

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

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

12 (A) the employer of the remote online notary public if
13 evidenced by a record signed by the remote online notary public and
14 the employer; or

15 (B) a repository meeting the standards established by the
16 Attorney General of Guam.

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

18 (A) standards for the retention of a video and audio copy of the
19 performance of the notarial act;

20 (B) procedures for preservation of the audio and video copy
21 and the electronic journal if the remote online notary public dies or is
22 adjudicated incompetent, or if the remote online notary public's
23 commission or authority to perform notarial acts is otherwise
24 terminated; and

25 (C) standards for third party repositories for the retention of
26 the audio and video copy of the performance of the notarial act.

27 **§ 33806. Use of Electronic Journal, Signature, and Seal.**

1 (a) A remote online notary public shall keep the remote online notary
2 public's electronic journal, electronic signature, and electronic seal secure. The
3 remote online notary public may not allow another person to use the remote online
4 notary public's electronic signature or electronic seal.

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

9 (c) A remote online notary public shall immediately notify law
10 enforcement and the Attorney General of Guam of the theft or vandalism of the
11 remote online notary public's electronic journal, electronic signature, or electronic
12 seal. A remote online notary public shall immediately notify the Attorney General
13 of Guam of the loss or use by another person of the remote online notary public's
14 electronic journal, electronic signature, or electronic seal.

15 **§ 33807. Remote Online Notarization Procedures.**

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

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

25 (1) the remote online notary public's personal knowledge of the
26 person creating the electronic signature; or

27 (2) each of the following:

1 (A) remote presentation by the person creating the electronic
2 signature of a government-issued identification credential, including a
3 passport or driver's license, that contains the signature and a
4 photograph of the person:

5 (B) credential analysis; and

6 (C) identity proofing.

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

10 (d) The remote online notarial certificate for a remote online notarization
11 must state that the person making the acknowledgement or making the oath appeared
12 remotely online.

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

17 **§ 33808. Fees for Remote Online Notarization.**

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

20 **§ 33809. Termination of Remote Online Notary Public's Commission.**

21 (a) Except as provided in Subsection (b) of this Section, a remote online
22 notary public whose commission terminates shall destroy the coding, disk,
23 certificate, card, software, or password that enables electronic affixation of the
24 remote online notary public's official electronic signature or seal. The remote online
25 notary public shall certify compliance with this Subsection to the Attorney General
26 of Guam.

1 (b) A former remote online notary public whose commission terminated
2 for a reason other than revocation or a denial of renewal is not required to destroy
3 the items described in Subsection (a) of this Section if the former remote online
4 notary public is recommissioned as a remote online notary public with the same
5 electronic signature and seal within three (3) months after the former remote online
6 notary public's former commission terminated.

7 **§ 33810. Wrongful Possession of Software or Hardware; Criminal**
8 **Offense.**

9 (a) A person who, without authorization, knowingly obtains, conceals,
10 damages, or destroys the certificate, disk, coding, card, program, software or
11 hardware enabling a remote online notary public to affix an official electronic
12 signature or seal commits a criminal offense.

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

14 **§ 33811. Conflict.**

15 In the event of a conflict between the provisions of this Article and any other
16 laws of Guam, the provisions of this Article shall control.”

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

19 **“ARTICLE 11**

20 **ELECTRONIC RECORDING AUTHORIZATION**

21 **§ 33901. Recording of an Electronic Record.**

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

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

1 (c) A requirement that a document or a signature associated with a
2 document be notarized, acknowledged, verified, witnessed, or made under oath is
3 satisfied if the electronic signature of the person authorized to perform that act, and
4 all other information required to be included, is attached to or logically associated
5 with the document or signature. A physical or electronic image of a stamp,
6 impression, or seal need not accompany an electronic signature if the notary has
7 attached an electronic notarial certificate that meets the requirements of this
8 Chapter.”

9 **Section 3.** § 33512 of Part 2, Article 6, Chapter 33, Title 5, Guam Code
10 Annotated, is hereby *amended* to read:

11 **“§ 33512. Criminal Prosecution.**

12 A notary who knowingly and repeatedly performs or fails to perform
13 any act prohibited or mandated respectively by this Chapter is guilty of a third
14 degree felony. Except as authorized under Article 10 of this Chapter, a notary
15 who knowingly performs a notarization for a person who does not appear
16 before the notary or at the notary’s office is guilty of a third degree felony.”

17 **Section 4. Rules and Regulations Adopted.** The rules and regulations,
18 entitled “RULES FOR REMOTE ONLINE NOTARIZATION,” and attached hereto
19 as “EXHIBIT A,” are hereby adopted by *I Liheslaturan Guåhan*, and the Guam
20 Compiler of Laws shall codify the same as Article 3 of Chapter 1 of Title 19, Guam
21 Administrative Rules and Regulations.

22 **Section 5. Effective Date.** This Act shall be effective upon enactment. The
23 Office of the Attorney General of Guam shall have forty-five (45) days from the date
24 of enactment to implement the administrative requirements it deems necessary for
25 the establishment of the Remote Online Notary Program.

26 **Section 6. Severability.** If any provision of this Act or its application to any
27 person or circumstance is found to be invalid or contrary to law, such invalidity shall

1 not affect other provisions or applications of this Act that can be given effect without
2 the invalid provision or application, and to this end the provisions of this Act are
3 severable.

EXHIBIT A

1 **“ARTICLE 3**

2 **RULES FOR REMOTE ONLINE NOTARIZATION**

3 § 3101. Online Notarization.

4 § 3102. Application for Online Notary Public Commission; Renewal.

5 § 3103. Performance of Notarial Acts.

6 § 3104. Electronic Signature and Seal.

7 § 3105. Standards for Online Notarization.

8 § 3106. Fees.

9 § 3107. Changes After Commissioning.

10 § 3108. Termination of Commission.

11 **§ 3101. Online Notarization.**

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

18 (b) The terms used herein shall have the same definitions prescribed in §
19 33801 of Article 10, Chapter 33, Title 5, Guam Code Annotated. These Rules pertain
20 to online notarizations as defined and used throughout Article 10 of Chapter 33, Title
21 5, Guam Code Annotated.

22 **§ 3102. Application for Online Notary Public Commission; Renewal.**

23 (a) A person who has been previously commissioned as a notary public by
24 the Attorney General of Guam, or meets the qualification requirements for
25 commissioning as a notary public as outlined in Chapter 33 of Title 5, Guam Code
26 Annotated, may submit an application for commissioning as an online notary public

1 by submitting to the Office of the Attorney General of Guam the prescribed
2 application form including the following information:

3 (1) the applicant's legal name;

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

8 (3) a valid email address of the applicant;

9 (4) a valid telephone number of the applicant;

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

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

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

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

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

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

23 (11) a copy of any necessary instructions or techniques supplied by a
24 vendor that allow the online notary public's electronic notarial certificate and
25 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 of Guam; and

10 (15) an application fee of One Hundred Dollars (\$100.00). All fees
11 shall be deposited in the Notary Public Revolving Fund and used according to
12 § 33106 of Article 1, 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 circumstance shall an online notary public base identification
5 merely on familiarity with a principal's electronic signature or an electronic
6 verification process that authenticates the principal's electronic signature when the
7 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 the
18 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 proofing
22 and credential analysis procedures described in § 3105 of these Rules
23 and both were satisfactory to verify the identity of the principal(s);

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

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

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

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

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

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

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

6 **§ 3104. Electronic Signature and Seal.**

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

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

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

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

26 (e) The online notary public must use technology from a third-party
27 provider who has provided the online notary public with evidence of its ability to

1 provide an electronic technology standard that utilizes Public Key Infrastructure
2 (PKI) technology from a PKI service provider that is X.509 compliant.

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

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

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

21 **§ 3105. Standards for Online Notarization.**

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

25 (b) Requirements for Credential Analysis. A credential is a non-military
26 identification card or other document issued by the United States government, any
27 state government, or a passport issued by a foreign government that has been

1 stamped by the United States immigration and naturalization service. In order to be
2 valid, the credential must also be unexpired and contain the photograph and
3 signature of the principal. Credential analysis is the process by which the validity of
4 a non-military government-issued identification credential is verified. Credential
5 analysis is performed utilizing public and proprietary data sources to verify the
6 credential presented by the principal. Credential analysis shall, at a minimum:

7 (1) use automated processes to aid the online notary public in
8 verifying the identity of a principal;

9 (2) ensure that the credential passes an authenticity test, consistent
10 with sound commercial practices that:

11 (A) use appropriate technologies to confirm the integrity of
12 visual, physical, or cryptographic security features;

13 (B) use appropriate technologies to confirm that the credential
14 is not fraudulent or inappropriately modified;

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

19 (D) provide output of the authenticity test to the online notary
20 public; and

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

25 (c) Requirements for Identity Proofing. Identity proofing is the process by
26 which the identity of an individual is affirmed by a third party through review of

1 public and proprietary data sources. Identity proofing is performed through dynamic
2 Knowledge Based Authentication (KBA) which meets the following requirements:

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

6 (2) each question must have a minimum of five (5) possible answer
7 choices;

8 (3) at least eighty percent (80%) of questions must be answered
9 correctly;

10 (4) all questions must be answered within two (2) minutes;

11 (5) if the principal fails in his or her first attempt, the principal may
12 retake the quiz one (1) time within twenty-four (24) hours;

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

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

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

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

23 (1) provide for continuous, synchronous audio-visual feeds;

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

1 (3) provide sufficient captured image resolution for credential
2 analysis to be performed in accordance with these Rules;

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

5 (5) provide some manner of ensuring that the electronic record
6 presented for online notarization is the same record electronically signed by
7 the principal;

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

13 (7) provide reasonable security measures to prevent unauthorized
14 access to:

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

16 (B) a recording of the audio-video communication;

17 (C) the verification methods and credentials used to verify the
18 identity of the principal; and

19 (D) the electronic documents presented for online
20 notarization.

21 **§ 3106. Fees.**

22 An online notary public, or the online notary public's employer, may charge
23 a fee that does not exceed Twenty-five Dollars (\$25.00) for performing each online
24 notarization.

25 **§ 3107. Changes after Commissioning.**

26 (a) An online notary public who changes his or her address, such that the
27 online notary public no longer qualifies for either a traditional notary public

1 **§ 3108. Termination of Commission.**

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