

Working Draft of Proposed Rules
Office of the Colorado Secretary of State
Notary Program Rules
8 CCR 1505-11

March 2, 2018

Disclaimer:

The following is a working draft concerning the Notary Program Rules. The Secretary values your input and is seeking feedback about the proposed revisions before a formal notice of rulemaking.

Please send your feedback by 5:00 PM on March 9, 2018. Please reference the specific page and line number in your comments. We will consider all comments submitted by this date for inclusion in the official rulemaking draft.

Please note the following formatting key:

Font effect	Meaning
Sentence case	Retained/modified current rule language
SMALL CAPS	New language
Strikethrough	Deletions
<i>Italic blue font text</i>	Annotations

1 *Amendments to 8 CCR 1505-11 follow:*

2 **Rule 1. Definitions**

3 *[Current Rule 1.4 is amended.]*

4 1.1 “Approved course of instruction” means a live classroom or webcast course approved by the
5 Secretary of State.

6 1.2 “Approved vendor” means a vendor approved by the Secretary of State who provides an
7 approved course of instruction to notaries and prospective notaries for a fee.

8 1.3 “Course provider” means an entity other than an individual that uses the Secretary of State’s
9 curriculum, in addition to any entity-specific practices, to provide notary training to its employees
10 or members free of charge.

11 1.4 “DAN” means the unique document authentication number issued by the Secretary of State and
12 required by ~~sections 12-55-106.5, 12-55-111(4), and 12-55-112(4.5)(b)~~, SECTION 24-21-520(3),
13 C.R.S., for electronic notarizations.

1 1.5 “Electronic notarization” means a notary’s notarization of electronic records that includes the
2 notary’s and the document signer’s electronic signatures.

3 1.6 “Electronic notarization software” means any software, coding, disk, card, certificate, or program
4 that creates and affixes the notary’s electronic signature.

5 *[New Rules 1.7 and 1.8.]*

6 1.7 “LEGAL PROCEEDING OR DISCIPLINARY ACTION BASED ON THE APPLICANT’S OR NOTARY
7 PUBLIC’S FRAUD, DISHONESTY, OR DECEIT” IN SECTION 24-21-523(1)(D), C.R.S., MEANS ANY
8 CIVIL OR CRIMINAL MATTER CONDUCTED EITHER JUDICIALLY OR ADMINISTRATIVELY
9 CONCERNING ACTIVITIES INVOLVING FRAUD, DECEIT, OR THE OTHER VIOLATIONS LISTED IN RULE
10 1.8.

11 1.8 “MISDEMEANOR INVOLVING DISHONESTY” IN SECTION 24-21-523(1)(C), C.R.S., MEANS A
12 VIOLATION OF, OR A CONSPIRACY TO VIOLATE, A CIVIL OR CRIMINAL LAW INVOLVING FRAUD,
13 DISHONESTY, BRIBERY, PERJURY, LARCENY, THEFT, ROBBERY, EXTORTION, FORGERY,
14 COUNTERFEITING, EMBEZZLEMENT, MISAPPROPRIATION OF PROPERTY, OR ANY OTHER OFFENSE
15 ADVERSELY AFFECTING A PERSON’S FITNESS TO SERVE AS A NOTARY PUBLIC.

16 ~~1.7~~-1.9 “New applicant” means a person seeking a commission as a Colorado notary for the first time or
17 a formerly commissioned notary in Colorado whose commission has been expired for more than
18 30 days.

19 **Rule 2. Notary Commissions**

20 2.1 Filing and training requirements

21 2.1.1 All notary filings must be submitted via the Secretary of State’s online electronic filing
22 system.

23 2.1.2 No more than six months before applying for a commission, a new applicant must
24 successfully complete training and pass the exam administered by the Secretary of State.

25 *[New Rule 2.1.3. Current Rules 2.1.3, 2.1.4, and 2.1.5 are renumbered as Rules 2.1.4, 2.1.5, and 2.1.6.*
26 *New Rule 2.1.6(a) is amended.]*

27 2.1.3 NO MORE THAN 90 DAYS BEFORE RENEWING A COMMISSION, A NOTARY MUST
28 SUCCESSFULLY COMPLETE TRAINING AND PASS THE EXAM ADMINISTERED BY THE
29 SECRETARY OF STATE.

30 ~~2.1.3~~-2.1.4 The Secretary of State will grant credit only for completion of courses offered by
31 an approved vendor, an approved course provider, or the Secretary of State.

32 ~~2.1.4~~-2.1.5 The Secretary of State may require a notary who has committed misconduct
33 meriting a disciplinary proceeding to retake and successfully complete the training and
34 exam.

35 ~~2.1.5~~-2.1.6 Examination. The Secretary of State’s open book examination will test the
36 applicant’s understanding of notary duties contained in the following:

- 1 (a) Title ~~12-24~~, Article ~~55-21~~, PART 5 (~~The Notaries Public Act~~ REVISED UNIFORM
2 LAW ON NOTARIAL ACTS) of the Colorado Revised Statutes;
- 3 (b) Title 38, Article 30 (Titles and Interests) of the Colorado Revised Statutes;
- 4 (c) Title 1, Article 40 (Initiative and Referendum) of the Colorado Revised Statutes;
5 and
- 6 (d) The Official Notary Handbook published by the Secretary of State.

7 2.2 Electronic notarization

8 *[Current Rule 2.2.1 is amended.]*

9 2.2.1 A notary must submit a notice of intent on the approved form and receive approval from
10 the Secretary of State before the notary may electronically notarize a document. A new
11 applicant may file the intent at the time of application but may only electronically
12 notarize a document after he or she has been commissioned and approved. A NOTARY
13 MAY CHOOSE TO EITHER USE A DAN AS THE NOTARY'S ELECTRONIC SIGNATURE OR
14 ADOPT A DIFFERENT ELECTRONIC SIGNATURE WHICH THE NOTARY MUST ALWAYS USE IN
15 CONJUNCTION WITH A DAN. If the applicant intends to use a different electronic
16 signature than a DAN, the applicant must attach an example of the electronic signature, a
17 description of the electronic signature technology, and contact information for the
18 technology's supplier or vendor. A notary must notify the Secretary of State of all
19 electronic signature changes.

20 *[Current Rules 2.2.2 and 2.2.3 are repealed. Current Rules 2.2.4 and 2.2.5 are renumbered as Rules 2.1.2*
21 *and 2.1.3]*

22 ~~2.2.2 A notary must include his or her notary identification number in an electronic~~
23 ~~notarization.~~

24 ~~2.2.3 For purposes of section 12-55-106.5(1), C.R.S., a notary's name means the notary's~~
25 ~~printed legal name.~~

26 ~~2.2.4~~2.2.2 A notary must:

- 27 (a) Use a different DAN for each electronic notarization;
- 28 (b) Take reasonable measures to secure assigned DANs against another person's
29 access or use and must not permit such access or use; and
- 30 (c) Request new DANs to replace lost or stolen DANs after notifying the Secretary
31 in the same manner as for a journal or seal.

32 ~~2.2.5~~2.2.3 A notary must verify that the document signer has adopted an electronic
33 signature to function as his or her signature before electronically notarizing a document.

34 *[Current Rule 2.2.6 is renumbered as Rule 2.2.4 and amended.]*

35 ~~2.2.6~~2.2.4 Expiration of the Secretary of State's approval to notarize electronically

- 1 (a) Approval automatically expires:
- 2 (1) Upon revocation, expiration, or resignation of the notary’s commission;
- 3 (2) 30 days after the notary’s name changes unless the notary previously
- 4 submitted a name change.
- 5 (3) Upon conviction of a felony;
- 6 (4) UPON CONVICTION OF A MISDEMEANOR INVOLVING DISHONESTY;
- 7 ~~(4)-(5)~~ If the notary ~~moves out of Colorado~~ NO LONGER HAS A PLACE OF
- 8 EMPLOYMENT OR PRACTICE OR A RESIDENTIAL ADDRESS IN THE STATE
- 9 OF COLORADO; or
- 10 ~~(5)-(6)~~ Upon the expiration or revocation of the technology described in the
- 11 notification.
- 12 (b) If approval expires, the notary or the notary’s authorized representative must
- 13 destroy all electronic notarization software and unused DANs unless:
- 14 (1) The notary’s commission expired; and
- 15 (2) Within 30 days of the commission’s expiration, the Secretary of State
- 16 recommissions the notary and the notary reregisters his or her electronic
- 17 signature.

18 **Rule 3. Notary Trainer Requirements**

19 3.1 Trainer Application

20 *[Current Rule 3.1.1(b) is amended.]*

21 3.1.1 A course provider applicant must:

- 22 (a) Submit an application that includes:
- 23 (1) Procedures to establish the identity of a person attending a live course
- 24 and ensure that the person is present for the required time;
- 25 (2) Procedures to ensure that the person receiving the certificate of
- 26 completion is the same person who completed the course;
- 27 (3) Copies of any course handout materials, workbooks, and tests; and
- 28 (4) A draft copy of the certificate of successful completion as required by
- 29 Rule 3.3.
- 30 (b) Attend IN-PERSON OR ONLINE training provided by the Secretary of State.

31 3.1.2 A vendor applicant must submit an application that includes:

- 1 (a) Procedures to establish the identity of a person attending a live course and ensure
2 that the person is present for the required time;
- 3 (b) Procedures to ensure that the person receiving the certificate of completion is the
4 same person who completed the course;
- 5 (c) Copies of any course handout materials, workbooks and tests;
- 6 (d) A draft copy of the certificate of successful completion as required by Rule 3.3;
- 7 (e) A detailed curriculum; and
- 8 (f) The required application fee.

9 3.1.3 Deficient application. The Secretary of State will notify an applicant of any application or
10 curriculum deficiencies. If the applicant fails to cure the deficiency within 30 days after
11 the mailing date of the notice, the Secretary will consider the application rejected. A
12 rejected applicant may request a hearing in accordance with the State Administrative
13 Procedure Act (Article 4 of Title 24, C.R.S.).

14 3.2 Vendor-specific requirements

15 *[Current Rule 3.2.1(a) is amended.]*

16 3.2.1 The Secretary of State must approve a vendor's proposed curriculum before a vendor
17 may offer a notary training course. Curriculum must be based on:

- 18 (a) The Colorado ~~Notaries Public Act~~ REVISED UNIFORM LAW ON NOTARIAL ACTS
19 including but not limited to: the physical presence requirement, duty not to
20 notarize a blank document, duty to use a notarial certificate, disqualifying
21 interest, application procedures, resignation requirements, duty to maintain a
22 journal of notarial acts, revocation proceedings, liability, identification of signers,
23 role of the notary, and official misconduct; and
- 24 (b) Widely accepted best practices, including but not limited to the role of the notary
25 and notarizations for the elderly.

26 *[Current Rule 3.2.2(c) is amended.]*

27 3.2.2 Seal of Accreditation

- 28 (a) The Secretary of State will provide a seal of accreditation to a vendor applicant
29 within 60 days after receipt of a subsequently approved application.
- 30 (b) A vendor must prominently display the seal of accreditation on all vendor
31 materials provided to a course attendee.
- 32 (c) A seal of accreditation expires four years after issuance. To renew accreditation,
33 a vendor must submit FOR REAPPROVAL A DETAILED CURRICULUM; COPIES OF
34 ANY COURSE HANDOUT MATERIALS, WORKBOOKS, AND TESTS; AND the required
35 form and fee.

- 1 (d) A vendor may not assign or transfer a seal of accreditation to another vendor or
2 curriculum without the Secretary of State’s approval.
- 3 (e) The seal of accreditation does not imply endorsement of a vendor’s products or
4 services or other courses.
- 5 3.2.3 Vendor’s list of attendees. An approved vendor must maintain and, upon request, provide
6 a list of attendees and the following information to the Secretary of State:
- 7 (a) The name of the instructor or instructors who taught the approved course of
8 instruction;
- 9 (b) The date, time, and location of the approved course of instruction;
- 10 (c) Whether proof of completion was issued to each attendee;
- 11 (d) Each course attendee’s full name and the type of current government-issued
12 photo identification used to establish the course attendee’s identity.
- 13 3.3 Certificate of completion. When a student successfully completes a course, the approved vendor
14 or course provider must issue the graduate a certificate of successful completion.
- 15 3.3.1 Approved vendors and course providers must ensure that only a person who has
16 completed an approved course of instruction receives a certificate of successful
17 completion. Vendors and course providers may not issue a certificate of completion to an
18 attendee who is absent during any substantive part of the course.
- 19 3.3.2 A certificate of successful completion of an approved course of instruction expires six
20 months from the date of issuance.
- 21 3.3.3 The certificate of proof of successful completion of an approved course of instruction
22 must contain:
- 23 (a) The name of the vendor or course provider who provided the course;
- 24 (b) The name of the person who completed the course;
- 25 (c) The date of completion of the course;
- 26 (d) The statement, “This certificate of proof of completion is valid for a period of six
27 months from the date of issuance.”; and
- 28 (e) For vendors, the seal of accreditation.
- 29 3.4 Notification of changes. Using their letterhead, approved vendors and course providers must
30 notify the Secretary of State within 30 days of:
- 31 3.4.1 A change in physical address or email address.
- 32 3.4.2 Substantial changes to an approved curriculum and provide copies of the changes.

33 *[Current Rule 3.5 is amended.]*

- 1 3.5 Duty to revise training. Approved vendors and course providers must revise approved courses of
2 instruction as necessary to ensure that the courses accurately reflect current Colorado law.
3 APPROVED VENDORS AND COURSE PROVIDERS MUST SUBMIT NOTICE OF REVISED TRAINING AND
4 COPIES OF THE REVISIONS TO THE SECRETARY OF STATE FOR REVIEW AND APPROVAL IN A
5 FORMAT THAT SATISFIES RULE 3.4, BEFORE OFFERING THE REVISED TRAINING TO THE PUBLIC.
- 6 3.6 Enforcement
- 7 3.6.1 Duty to respond to the Secretary of State’s written request. Vendors and course providers
8 must respond in writing within 20 business days of receiving a written request from the
9 Secretary of State for any information relating to a complaint or approved course of
10 instruction. The Secretary of State will send a written request to the address or email
11 address listed on the most current application.
- 12 3.6.2 Onsite inspections. Approved vendors and course providers must permit the Secretary of
13 State or the Secretary’s designee to attend any approved course of instruction without
14 prior notice at no charge to observe, monitor, audit, and investigate.
- 15 3.6.3 Complaints. A person may file a complaint against an approved vendor or course
16 provider with the Secretary of State alleging a violation of these rules. The person must
17 submit a signed and dated complaint on the Secretary of State’s standard form.
- 18 3.6.4 Grounds for termination of accreditation or approval. The Secretary of State may
19 terminate an approved vendor’s accreditation or approval of a course provider for any of
20 the following reasons:
- 21 (a) Violation of any provision of these rules.
- 22 (b) Misrepresentation of a notary public’s duties and authority under Colorado law.
- 23 (c) Deviation from the lesson plan for an approved course of instruction.
- 24 (d) Making representations that the Secretary of State endorses, recommends, or
25 mandates use of any of the vendor’s products, goods, or services.
- 26 (e) Failure to timely respond to the Secretary of State’s request for communication
27 or otherwise cooperate with an investigation.
- 28 3.6.5 Right to appeal termination of accreditation or approval. If the Secretary of State
29 proposes to terminate an approved vendor’s accreditation status or approval of a course
30 provider, the vendor or course provider has the right to request a hearing as provided in
31 the State Administrative Procedure Act, (Article 4 of Title 24, C.R.S.)
- 32 (a) If the approved vendor or the course provider does not request a hearing,
33 termination will be effective 30 days after the mailing date of the termination
34 notice.
- 35 (b) Termination does not bar the Secretary of State from beginning or continuing an
36 investigation concerning the vendor or course provider.

37

1 *[New Rule 4.]*

2 **RULE 4. NOTARY JOURNAL REQUIREMENTS**

3 4.1 IF A CURRENT OR FORMER NOTARY LEAVES THE NOTARY JOURNAL WITH THE NOTARY'S FIRM OR
4 EMPLOYER, AS AUTHORIZED BY SECTION 24-21-519(10)(A), C.R.S., THE NOTARY MUST NOTIFY
5 THE SECRETARY OF STATE BY ELECTRONICALLY SUBMITTING THE REQUIRED FORM.

6 4.2 A FIRM OR EMPLOYER IN POSSESSION OF A NOTARY'S JOURNAL HAS THE SAME RESPONSIBILITY
7 AS A NOTARY TO:

8 4.2.1 KEEP THE JOURNAL SECURE AS DETAILED IN SECTION 24-21-519(4), C.R.S.;

9 4.2.2 PROVIDE A COPY OF A REQUESTED TRANSACTION TO A MEMBER OF THE PUBLIC PER
10 SECTION 24-21-519(5), C.R.S, BUT WITHOUT CERTIFYING THE COPY OR CHARGING A
11 NOTARY FEE;

12 4.2.3 PROVIDE THE JOURNAL TO THE SECRETARY OF STATE FOR AUDITING OR INSPECTION
13 WITHOUT RESTRICTION PER SECTION 24-21-519(6), C.R.S.;

14 4.2.4 PROVIDE THE JOURNAL TO A CERTIFIED PEACE OFFICER PER SECTION 24-21-519(7),
15 C.R.S.; AND

16 4.2.5 NOTIFY THE SECRETARY OF STATE IF THE JOURNAL IS LOST OR STOLEN PER SECTION 24-
17 21-519(8), C.R.S.

18 4.3 A FIRM OR EMPLOYER IN POSSESSION OF A NOTARY'S JOURNAL MAY:

19 4.3.1 RETAIN THE JOURNAL INDEFINITELY; OR

20 4.3.2 TRANSMIT THE JOURNAL TO THE COLORADO STATE ARCHIVES AND NOTIFY THE
21 SECRETARY OF STATE PER SECTION 24-21-519(10)(A)(I) AND (B), C.R.S.