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OFFICE OF THE  
SECRETARY

MURIEL BOWSER  
MAYOR

**JUN - 5 2017**

The Honorable Phil Mendelson  
Chairman  
Council of the District of Columbia  
1350 Pennsylvania Avenue, N.W., Suite 504  
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and enactment by the Council of the District of Columbia is proposed permanent legislation entitled "Notary Public Electronic Establishment and Enhancement Act of 2017" ("legislation"). This legislation will establish an electronic notary public system, authorize the establishment of a notary public database as well as make many other updates to the notary public chapter that not only benefit the Office of Notary Commissions and Authentications (ONCA), but more importantly the customers it serves. The Office of the Secretary ("OS") has extensively reviewed the notary laws in numerous jurisdictions, as well as the Revised Uniform Law on Notarial Acts (RULONA), in order to determine what provisions will work best in the District of Columbia.

Many of the sections of the District's notary laws have not been amended since 1901 and therefore do not confirm to current best practices. If enacted, the legislation would no longer require that a notary's sole place of residence or business be in the District, instead the District can be the notary's primary place of residence or business. Many businesses while having a single office in D.C., may also have offices elsewhere. The legislation will also require that a notary public not be convicted of crimes involving dishonesty. Notaries are responsible for reviewing various types of legal instruments and many jurisdictions hold notaries to this standard. The legislation will codify what is currently promulgated in regulations, that the fee to become a notary public is \$75. Additionally, the Council adopted this fee in the FY 2011 Budget Support Act of 2010 (Subtitle H), via the "Notaries Public Authentications and License Fee Amendment Act of 2010", but it was never incorporated into the Code. The proposed bill will give the Mayor the authority to revoke the commission of notaries public whom take higher fees than what is permitted by law.

If enacted, the legislation would prohibit notaries commissioned in other states from acting as a notary in the District, but would allow notaries commissioned in the District to notarize documents from other states. The legislation would also require that upon death, resignation, or revocation notaries must return official notarial seal to the District, along with the notaries official papers. This ensures that the seal is safely disposed of, preventing improper use.

Currently, notaries must charge \$5 for each notarial act and does not allow for circumstances upon which the notary may choose to waive the fee or charge a lesser amount. Notaries have inquired to the ONCA about the ability to charge less or waive the fee, and similarly, other jurisdictions permit this discretion. The proposed

legislation would permit notaries to charge reasonable travel expenses if the notarial act is performed in a place other than the notary's usual place of business. The travel expenses must be agreed upon and itemized separate from the notarial fees.

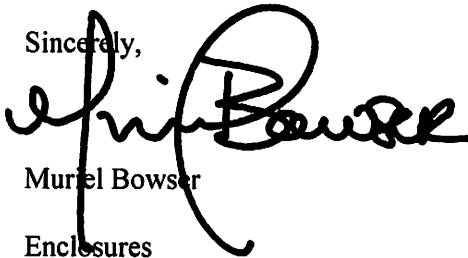
Currently, the notary law provides no requirements around the types of identification that a notary may accept as proof of identification from the individual requesting notary services. In order to provide clarity for notaries and residents, and aligned with best practices, this legislation provides the type of identification that must be presented to a notary.

The legislation also establishes an electronic notary system which will allow notaries to notarize electronic documents, or what is commonly known as e-notaries. Under the electronic notary system, e-notaries will be permitted to use electronic seals and signatures rather than the traditional embosser and a live signature. The National Association of Secretaries of States lists 24 jurisdictions that provide for e-notarizations. While primarily used for real estate, they certainly are part of modern technology and this new system will ensure that the District of Columbia is in line with current trends.

In summary, this is comprehensive legislation that will update and modernize the District's current notary laws and align the District with best practices across the country.


I urge the Council to take prompt and favorable action on the enclosed legislation. If you have any questions, please contact the Secretary of the District of Columbia, Lauren Vaughan, at (202) 727-6527.

Sincerely,

A handwritten signature in black ink, appearing to read "Muriel Bowser". The signature is written in a cursive style with a large, looping initial "M".

Muriel Bowser

Enclosures

  
Chairman Phil Mendelson  
At the request of the Mayor

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5  
6 A BILL  
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8

9 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
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13 Chairman Phil Mendelson, at the request of the Mayor, introduced the following bill  
14 which was referred to the Committee on \_\_\_\_\_.  
15

16 To establish an electronic notary system for notaries public to provide electronic notarial  
17 acts, to authorize the Office of the Secretary to create an electronic database of  
18 notaries public and electronic notaries, to permit the Mayor to appoint notaries  
19 public whose primary place of business or employment is located within the  
20 District, to require notaries public to have personal knowledge of the individual  
21 requesting notary services or require current identification, to require notaries  
22 public to return the notary seal upon death, resignation, or removal from office,  
23 to prohibit a person convicted of crimes involving dishonesty from becoming a  
24 notary public, to align the \$75 notary license fee published in regulations with the  
25 statutory license fee, to permit notaries public to charge less than or to waive the  
26 \$5 fee required for notarial acts, to authorize the Mayor to fine or remove a notary  
27 public from office, to clarify that a notary public commissioned by the District is  
28 not authorized thereby to act as a notary public in another state, and to permit  
29 notaries public to charge reasonable fees for travel purposes.  
30

31 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

32 That this act may be cited as the "Notary Public Electronic Establishment and  
33 Enhancement Amendment Act of 2017".

34 Sec. 2. Definitions.

35 For the purposes of this act, the term:

36 (1) "Electronic" means relating to technology having electrical, digital, magnetic,  
37 wireless, optical, electromagnetic, or similar capabilities.

38 (2) "Electronic document" means information that is created, generated, sent,  
39 communicated, received, or stored by electronic means.

40 (3) "Electronic notarial act" and "electronic notarization" mean an official act by  
41 an electronic notary that involves electronic documents.

42 (4) "Electronic notary" means an individual who has been commissioned as a  
43 notary public in the District and is also commissioned by the Office of the Secretary to  
44 perform electronic notarial acts in conformance with this act.

45 (5) "Electronic seal" means information within a notarized electronic document  
46 that includes the notary's name, jurisdiction, and commission expiration date, and  
47 generally corresponds to the information found in notary seals used on paper documents.

48 (6) "Electronic signature" means an electronic symbol or process attached to or  
49 logically associated with an electronic document and executed or adopted by a person  
50 with the intent to sign the document.

51 (7) "Notary's electronic signature" means a form of electronic signature which has  
52 been approved by the Office of the Secretary as an acceptable means for an electronic  
53 notary to affix the notary's official signature to an electronic record that is being  
54 notarized.

55 (8) "Secretary" means the Secretary of the District.

56 (9) "Notary public" means an individual who has been commissioned as a notary  
57 public in the District of Columbia.

58 Section 3. Application.

59 (a) A person seeking to be commissioned as an electronic notary public shall:

60 (1) Hold a valid commission as a notary public in the District; and

61 (2) Submit an application with the Office of Notary Commissions and  
62 Authentications within the Office of the Secretary.

63 (b)(1) In order to become commissioned as an electronic notary public and for  
64 each renewal of that commission, a notary public shall pay a non-refundable license  
65 fee to be determined by the Mayor for the term of the commission, in addition to the  
66 license fee imposed for the commission as a notary public.

67 (2) No license fee shall be collected from a notary public whose notarial  
68 duties are confined solely to official government business in the United States or  
69 District governments.

70 (c) Before performing electronic notarial acts, an electronic notary shall:

71 (1) Complete a training class provided by the Office of the Secretary;  
72 and

73 (2) Shall take the oath prescribed for civil officers in the District of  
74 Columbia;

75 (3) Register the capability to notarize electronically with the Office of the  
76 Secretary. The registration shall include:

77 (i) The applicant's name exactly as stated on the commission;

78 (ii) A description of the technology the applicant will use to create  
79 an electronic signature in performing official acts;

80 (iii) The expiration date of the applicant's notary commission; and

81 (iv) An exemplar of the notary's electronic signature and of the  
82 notary's official electronic seal.

83 (d) The electronic registration for an electronic notary's public electronic seal and  
84 signature shall be transmitted electronically to the Secretary and shall include any  
85 decrypting instructions, codes, keys, or software that allows the registration to be read.

86 (e)(1) The term of the commission as an electronic notary shall coincide with the  
87 term of the notary public's commission.

88 (2) An electronic notary shall reapply for a commission to notarize  
89 electronically at the same time the notary applies for recommissioning of notary  
90 public functions under the requirements of section 558 of An Act to establish a code of  
91 law for the District of Columbia, approved March 3, 1901 (31 Stat. 1279; D.C. Official  
92 Code § 1-1201).

93 Sec. 4. Types of electronic notarial acts.

94 The following types of notarial acts may be performed electronically:

- 95 (1) Acknowledgments;
- 96 (2) Witnessing or attesting a signature; and
- 97 (3) Oaths or affirmations.

98 Sec. 5. Identification.

99 An electronic notary public shall perform an electronic notarization only if the  
100 signer of the electronic document:

- 101 (1) Is in the presence of the electronic notary at the time of notarization; and
- 102 (2) Is personally known to the electronic notary or identified by evidence in  
103 accordance with section 568a of An act to establish a code of law for the District of  
104 Columbia, passed on second reading on \_\_\_ (Enrolled version of Bill 22-\_\_\_).

105 Sec. 7. Notarial components of electronic documents.

106 In performing an electronic notarial act, the following components shall be  
107 attached to, or logically associated with, the electronic document by the electronic  
108 notary, all of which shall be immediately perceptible and reproducible in the electronic  
109 record to which the notary's electronic signature is attached:

110 (1) The notary's name, exactly as stated on the commission issued by the Office  
111 of Notary Commissions and Authentications;

112 (2) The words "Electronic notary";

113 (3) The words "District of Columbia";

114 (4) The expiration date of the commission;

115 (5) The notary's electronic signature; and

116 (6) The completed wording of one of the following notarial certificates:

117 (A) Acknowledgment;

118 (B) Witnessing or attesting a signature; or

119 (C) Oath or affirmation.

120 Sec. 8. Fees.

121 (a) The Mayor, pursuant to Title I of the District of Columbia Administrative  
122 Procedure Act, approved October 21, 1968 (82 Stat. 1024; D.C. Official Code § 2-501  
123 *et seq.*), may issue rules to carry out the provisions of this act, including rules to  
124 establish and amend fees to be charged by electronic notaries for electronic notarial acts.

125 (b) An electronic notary may waive a scheduled fee, or charge an amount less  
126 than the scheduled fee.

127 Sec. 9. Electronic signature and electronic seal.

128 The electronic notary's electronic signature and electronic seal shall be used

129 only for the purpose of performing electronic notarial acts.

130 Sec. 10. Security measures.

131 (a) An electronic notary shall safeguard the notary's electronic signature, the  
132 notary's electronic seal, and all other notarial records. Electronic notarial records shall  
133 be maintained by the notary, and the notary shall not surrender or destroy the records  
134 except as required by a court order or as allowed under rules adopted by the Secretary.

135 (b) When not in use, the electronic notary shall keep the notary's electronic  
136 signature, electronic seal, and all other electronic notarial records secure, under the  
137 exclusive control of the electronic notary, and shall not allow them to be used by  
138 any other notary public or any other person.

139 (c) An electronic notary shall do the following within 10 days of discovering  
140 that the electronic notary's electronic seal or electronic signature has been stolen, lost,  
141 damaged, or otherwise rendered incapable of affixing a legible image:

142 (1) Inform the appropriate law enforcement agency in the case of theft  
143 or vandalism; and

144 (2) Notify the Secretary in writing, signed in the official name in  
145 which the electronic notary was commissioned.

146 (d) An electronic notary shall keep a fair record of all notarial acts in accordance  
147 with section 569 of An Act to establish a code of law for the District of Columbia,  
148 approved March 3, 1910 (31 Stat. 1280; D.C. Official Code § 1-1211).

149 (e) Upon the death, resignation, or removal from office of an electronic notary  
150 public, the electronic notary public or their representative shall erase, delete, or destroy



151 any coding, disk, certificate, card, software, or password that enables electronic affixation  
152 of the notary's official electronic signature or seal, and so certify to the Secretary.

153 Sec. 11. Maintenance of an electronic device.

154 (a) An electronic notary shall take reasonable steps to ensure that the registration  
155 of any device used to create the electronic notary's electronic signature is current and  
156 has not been revoked or terminated by the Office of Notary Commissions and  
157 Authentications.

158 (b) If the registration of the device used to create electronic signatures  
159 expires or is changed during the electronic notary's term of office, the notary shall  
160 cease performing electronic notarizations until:

161 (1) A new device is duly issued or registered to the electronic notary; and

162 (2) An electronically signed notice is sent to the Office of Notary  
163 Commissions and Authentications that shall include the starting and expiration dates of  
164 any new registration term and any other new information at variance with information  
165 in the most recently executed electronic registration form.

166 Sec. 12. Certificate forms.

167 (a) The Mayor shall create an electronic certificate of authority evidencing the  
168 authenticity of the official electronic signature and electronic seal of an electronic notary.

169 The electronic certificate of authority shall contain:

170 (1) The name of the electronic notary;

171 (2) The dates of the beginning and end of the commission of the electronic  
172 notary;

173 (3) The name of the commissioning official; and

174 (4) A statement that the electronic notary will fulfill the duties of that  
175 office according to the law, and will hold the office, with all the attendant powers,  
176 privileges, and responsibilities for the remainder of the electronic notary's term.

177 (b) The Office of Notary Commissions and Authentications may charge an  
178 electronic notary a \$10 fee for the reproduction of the certificate.

179 Sec. 13. Notaries public electronic database.

180 The Office of the Secretary shall maintain an electronic database of all notaries  
181 public and all electronic notaries public commissioned in the District.

182 Sec. 14. The Mayor, pursuant to Title I of the District of Columbia Administrative  
183 Procedure Act, approved October 21, 1968 (82 Stat. 1024; D.C. Official Code § 2-501 *et*  
184 *seq.*), may issue rules to carry out the provisions of this act, including rules to establish  
185 and amend fees.

186 Sec. 15. An Act to establish a code of law for the District of Columbia, approved  
187 March 3, 1901 (31 Stat. 1279; D.C. Official Code § 1-1201 *et seq.*), is amended as  
188 follows:

189 (a) Section 558 (D.C. Official Code § 1-1201) is amended to read as follows:

190 "Sec. 558. Appointment; representation of clients before government  
191 departments; license fee; rules.

192 "(a) The Mayor shall have power to appoint such number of notaries public,  
193 residents of the District, or whose primary place of business or employment is located  
194 within the District, as, in the Mayor's discretion, the business of the District may require;  
195 provided, that the appointment of any person as a notary public, or the acceptance of the  
196 person's commission as notary public, or the performance of the duties thereunder, shall

197 not disqualify or prevent the person from representing clients before any of the  
198 departments of the United States government in the District or elsewhere; provided  
199 further, that a person appointed as a notary public who appears to practice or represent  
200 clients before any such department is not otherwise engaged in government employ, and  
201 shall be admitted by the heads of such departments to practice therein in accordance with  
202 the rules and regulations prescribed for other persons or attorneys who are admitted to  
203 practice therein; provided further, that no notary public shall be authorized to take  
204 acknowledgments, administer oaths, certify papers, or perform any official acts in  
205 connection with matters in which he is employed as counsel, attorney, or agent, or in  
206 which he may be in any way interested before any of the departments aforesaid; and  
207 provided further, that no person shall be appointed or reappointed a notary public if the  
208 person has been convicted under the laws of the District, and state, or the United States of  
209 an offense involving dishonesty, including but not limited to fraud, forgery, deceptive  
210 labeling, counterfeiting, false personation, perjury, false statements, tampering with  
211 physical evidence, or theft previously known as larceny, larceny by trick, larceny by  
212 trust, embezzlement, or false pretenses.

213       “(b) Before obtaining a commission, and for each renewal thereof, each notary  
214 public shall pay to the District a license fee of \$75; provided, that no license fee shall be  
215 collected from any notary public whose notarial duties are confined solely to official  
216 business in the United States or District governments; provided further, that no notary fee  
217 shall be collected at any time by a notary public who is exempted from the payment of  
218 the license fee. The Mayor is hereby authorized to refund, in the manner prescribed by

219 law for the refunding of erroneously paid taxes, the amount of any fee erroneously paid  
220 or collected under this section.

221 “(c) The Mayor, pursuant to subchapter I of Chapter 5 of Title 2, [§ 2-501 et seq.],  
222 may issue rules to carry out the provisions of this section and §§ 1-1202 to 1-1215,  
223 including rules to establish and amend fees.

224 (b) Section 566 (D.C. Official Code § 1-1209) is amended to be read as follows:

225 “Section 566. Other acts for use and effect beyond the District.

226 “A notary public commission issued by the District does not authorize the holder  
227 to act as a notary public in another state or territory. A notary public commissioned by  
228 another state or territory shall not act as a notary public in the District unless  
229 commissioned by the District. A notary public commissioned in the District may notarize  
230 documents from another state or territory as long as the document is notarized within the  
231 District.”.

232 (c) A new section 568a is added to read as follows:

233 “Sec. 568a. Identification.

234 “(a) A notarial act shall be performed only if the individual requesting the notarial  
235 act is in the presence of the notary public. Before performing a notarial act, a notary  
236 public shall:

237 “(1) Have personal knowledge of the identity of the individual requesting  
238 the notarial act; or

239 “(2) Receive satisfactory evidence of the identity of the individual  
240 requesting the notarial act.

241           “(b) For the purposes of subsection (a)(1) of this section, a notary public has  
242 personal knowledge of the identity of an individual requesting a notarial act if the  
243 individual is personally known to the notary public through dealings sufficient to provide  
244 reasonable certainty that the individual has the identity claimed.

245           “(c) For the purposes of subsection (a)(2) of this section, a notary public has  
246 satisfactory evidence of the identity of an individual requesting a notarial act if the notary  
247 public can identify the individual pursuant to any of the following:

248                       “(1) A non-expired passport;

249                       “(2) A non-expired government-issued driver’s license; or

250                       “(3) Another current form of government-issued identification that  
251 contains the signature or a photograph of the individual.

252           (d) Section 571 (D.C. Official Code § 1-1213) is amended by adding new  
253 subsections (d) and (e) to read as follows:

254                       “(d) A notary may waive a scheduled fee or charge an amount less than the  
255 scheduled fee.

256                       “(e) A notary may charge, upon agreement of the person to be charged, an amount  
257 not to exceed the actual and reasonable expense of traveling to a place where a notarial  
258 act is to be performed if it is not the usual place where the notary performs notarial acts.  
259 Traveling expenses shall be in writing, itemized, and separate from the fee for the notarial  
260 act.”.

261           (e) Section 572 (D.C. Official Code § 1-1214) is amended by striking the phrase  
262 “Superior Court of the District of Columbia” and inserting the word “Mayor” in its place.

263 (f) Section 573 (D.C. Official Code § 1-1215) is amended by striking the phrase  
264 “official papers,” and inserting the phrase “official papers and official notarial seal,” in its  
265 place.

266 Sec. 16. Fiscal impact.

267 The Council adopts the fiscal impact statement in the committee report as the  
268 fiscal impact statement required by section 4a of the General Legislative Procedures Act  
269 of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

270 Sec. 17. Effective date.

271 This act shall take effect following approval by the Mayor (or in the event of veto  
272 by the Mayor, action by the Council to override the veto), a 30-day period of  
273 Congressional review as provided in section 602(c)(2) of the District of Columbia Home  
274 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-  
275 206.02(c)(1)), and publication in the District of Columbia Register.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF THE ATTORNEY GENERAL



KARL A. RACINE  
ATTORNEY GENERAL

LEGAL COUNSEL DIVISION

**MEMORANDUM**

**TO:** Chan Tei DuRant, Esq.  
Associate Director  
Office of Policy and Legislative Affairs  
Executive Office of the Mayor

**FROM:** Janet M. Robins  
Deputy Attorney General  
Legal Counsel Division

**DATE:** May 16, 2017

**SUBJECT:** Legal Sufficiency Review of Draft Legislation, the "Notary Public Electronic Establishment and Enhancement Amendment Act of 2017"  
(AE-17-272)

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**This is to Certify that** this Office has reviewed the above-referenced legislation and has found it to be legally sufficient. If you have questions regarding this certification, please do not hesitate to contact me at 724-5524.

  
Janet M. Robins