

JUNE 16, 2014

NOTICE OF EMERGENCY RULE DECISION BY THE ATTORNEY GENERAL

AGENCY: Secretary of State

RULE: Standards and Guidelines for Notaries Public Series 153-46

DATE FILED AS AN EMERGENCY RULE: May 22, 2014

Following review under W. Va. Code §29A-3-15b, it is the decision of the Attorney General that the above emergency rule is approved. A copy of the complete decision with required findings is available from this office.

West Virginia
Office of the Attorney General
Patrick Morrissey

By: 

Daniel W. Greear
Chief Counsel

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SECRETARIAT OF STATE

EMERGENCY RULE DECISION
(ERD 1-14)

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RULE: Standards and Guidelines for Notaries Public Series 153-46

SECRETARY OF STATE

DATE FILED AS AN EMERGENCY RULE: May 22, 2014

The Secretary of State has filed the above emergency rule.

W. Va. Code §29A-3-15b requires the Attorney General to review all emergency rules filed by the Secretary of State. This review requires the Attorney General to determine if the Secretary of State when filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.

Following review, the Attorney General shall issue a decision as to whether or not such an emergency rule should be disapproved [§29A-3-15b].

(A) Procedural Compliance: W. Va. Code §29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State (or in the case of the Secretary of State with the Attorney General) and forthwith with the Legislative Rule-Making Review Committee (LRMRC).

If the Secretary of State has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Attorney General shall rule in favor of procedural compliance.

The Secretary of State filed this emergency rule with supporting documentation with the Secretary of State on May 20, 2014, and has filed this documentation with the LRMRC.

It is the determination of the Attorney General that the Secretary of State has complied with the procedural requirements of W. Va. Code §29A-3-15 for adoption of an emergency rule.

(B) Statutory Authority -- W. Va. Code §39-4-25, which was passed by H.B. 2012, and which is to take effect July 1, 2014, provides as follows:

§39-4-25. Rules.

(a) The Secretary of State may promulgate rules, in accordance with the provisions of chapter twenty-nine-a of this code, to implement this article. Rules promulgated regarding the performance of notarial acts with respect to electronic records may

not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. The rules may:

(1) Prescribe the manner of performing notarial acts regarding tangible and electronic records;

(2) Include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;

(3) Include provisions to ensure integrity in the creation, transmittal, storage or authentication of electronic records or signatures;

(4) Prescribe the process of granting, renewing, conditioning, denying, suspending or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as notary public;

(5) Include provisions to prevent fraud or mistake in the performance of notarial acts;

(6) Establish the process for approving and accepting surety bonds and other forms of assurance under subsection (d), section twenty of this article; and

(7) Establish fees, with legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code. Fees collected by the Secretary of State pursuant to section two, article one, chapter fifty-nine of this code shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state general revenue fund and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required by the provisions of article four, chapter thirty-nine of this code.

(b) In promulgating, amending or repealing rules about notarial acts with respect to electronic records, the Secretary of State shall consider, so far as is consistent with this article:

(1) The most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State;

(2) Standards, practices and customs of other jurisdictions that substantially enact this article; and

(3) The views of governmental officials and entities and other interested persons.

It is the determination of the Attorney General that the Secretary of State has not exceeded its statutory authority in promulgating this emergency rule.

(C) Emergency -- W. Va. Code §29A-3-15(f) defines "emergency" as follows:

(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.

There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. The Secretary of State need only document to the satisfaction of the Attorney General that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

The facts and circumstances as presented by the Secretary of State are as follows:

With the passage of Committee Substitute for House Bill 4012 (revised uniform law notarial acts)(effective July 1, 2014), the current law for notaries is appealed. The new law provides some minimal standards and grants the Secretary of State authority to promulgate rules to effectuate the law. Because this is a uniform law suggested by the uniform law commission, many elements are absent to ensure uniformity across the adopted states and left to rule making for clarification on a state by state basis. This emergency rule provides additional requirements for items on a notary stamp, clarifies name and address changes, gives additional information and informs of assurance and sets out a process for a commission.

It is the determination of the Secretary of State that this proposal qualifies under the definition of emergency as defined in W. Va. Code §29A-3-15(f).

This decision is available from the Attorney General and has been filed with the Secretary of State, the Attorney General and the Legislative Rule Making Review Committee.

West Virginia
Office of the Attorney General
Patrick Morrissey

By: 
Daniel W. Greear
Chief Counsel

Entered 6/30/14

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