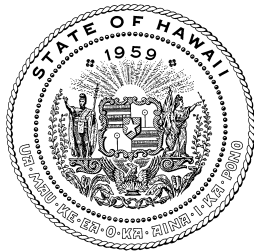


Small Business Regulatory Review Board Meeting

September 16, 2021

10:00 a.m.



SMALL BUSINESS REGULATORY REVIEW BOARD

Department of Business, Economic Development & Tourism (DBEDT)
No. 1 Capitol District Building, 250 S. Hotel Street, Fifth Floor, Honolulu, HI 96813
Mailing Address: P.O. Box 2359, Honolulu, HI 96804
Email: dbedt.sbrrb.info@hawaii.gov
Website: sbrrb.hawaii.gov

Tel: 808 586-2419

AGENDA

Thursday, September 16, 2021 ★ 10:00 a.m.

David Y. Ige
Governor

Mike McCartney
DBEDT Director

Members

Robert Cundiff
Chairperson
O'ahu

Mary Albitz
Vice Chairperson
Maui

Jonathan Shick
2nd Vice Chairperson
O'ahu

Dr. Nancy Atmospera-Walch
O'ahu

William Lydgate
Kaua'i

James (Kimo) Lee
Hawai'i

Garth Yamanaka
Hawai'i

Taryn Rodighiero
Kaua'i

Mark Ritchie for
Director, DBEDT
Voting Ex Officio

As authorized under the Governor's August 5, 2021 Proclamation Related to the COVID-19 Emergency, the meeting will be held remotely with Board Members, Staff, and Agencies participating via online meeting venue. The public can participate in the meeting via video-audio livestream; to join the meeting, go to:

<https://zoom.us/j/3082191379>

Copies of the Board Packet will be available on-line for review at: <https://sbrrb.hawaii.gov/meetings/agendas-minutes?yr=2021>.

An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Members of the public may submit written testimony via e-mail to: DBEDT.sbrrb.info@hawaii.gov. Please include the word "Testimony" and the subject matter following the address line. All written testimony should be received no later than 4:30 p.m., Wednesday, September 15, 2021.

The Board may go into Executive Session under Section 92-5 (a)(4), HRS to Consult with the Board's Attorney on Questions and Issues Concerning the Board's Powers, Duties, Immunities, Privileges and Liabilities.

I. Call to Order

II. Approval of August 19, 2021 Meeting Minutes

III. Old Business – After Public Hearing

- A. Discussion and Action on the Small Business Statement after Public Hearing and Proposed Amendments to HAR Title 5 Chapter 5-11, **Notaries Public**, promulgated by Department of the Attorney General – **Discussion Leader – William Lydgate**

IV. Administrative Matters

- A. Update on the Board’s Upcoming Advocacy Activities and Programs in accordance with the Board’s Powers under Section 201M-5, Hawaii Administrative Rules (HRS)

V. Next Meeting: Thursday, October 21, 2021 at 10:00 a.m.

VI. Adjournment

If you require special assistance or auxiliary aid and/or services to participate in the public hearing process, please call (808) 586-2419 or email dbedt.sbrrb.info@hawaii.gov at least three (3) business days prior to the meeting so arrangements can be made.

II. Approval of August 29, 2021 Meeting Minutes

Small Business Regulatory Review Board

MEETING MINUTES - HELD THROUGH VIDEO-CONFERENCING - DRAFT

August 19, 2021

- I. **CALL TO ORDER:** Chair Cundiff called the meeting to order at 10:02 a.m., with a quorum present, which was open to the public.

MEMBERS PRESENT:

- Robert Cundiff, Chair
- Mary Albitz, Vice Chair
- Jonathan Shick, 2nd Vice Chair
- William Lydgate
- James (Kimo) Lee
- Taryn Rodighiero
- Mark Ritchie

ABSENT MEMBERS:

- Dr. Nancy Atmospera-Walch

STAFF: DBEDT

Dori Palcovich
Jet'aime Alcos

Office of the Attorney General

Alison Kato

II. **APPROVAL OF July 29, 2021 MINUTES**

Mr. Lee made a motion to accept the July 29, 2021 meeting minutes, were approved as amended. Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

III. **NEW BUSINESS** – Before Public Hearing

- A. Discussion and Action on the Small Business Statement after Public Hearing and Proposed Amendments to Section 5A-6.4 of the Kauai County Code, Real Property Tax Classification Rules, promulgated by the County of Kauai Department of Finance

Ms. Reiko Matsuyama, Finance Director at the Department of Finance - County of Kauai, explained that the proposed rules represent an amendment to Kauai's tax classification. The rules are intended to create and ensure equity between entities operating in similar fashions.

Kauai's tax system is based on the "actual use" of a property and so the rules will help define those uses. Taxing on "actual use" was established for the County of Kauai in 2013; subsequently, the County promulgated the original rules in 2015. Presently, the initial need to amend these rules arose from two separate changes in the Kauai County Code. Therefore, the amendments in these rules mirror the County Code's changes.

The first change, which was modified in 2020, relates to home exemption, Section 12-6 (h), where the qualifications under the Homestead Act have been strengthened. The second change relates to the residential investor classification under Section 12-6 (i) where the threshold of the assessed value was reduced from \$2 million to \$1.3 million. This section further denotes how to be excluded from the residential investor classification, which is the third highest tax rate. In addition, other sections throughout the chapter have been clarified and modified.

A public hearing was held via Microsoft TEAMS on August 2, 2021 with no one present to testify. Ms. Matsuyama explained that there has been some notice of opposition and concerns that have not been brought to the department directly. As an example, one of the concerns heard was due to value added products and that if sold on property it will constitute being classified as commercial. There are no changes to someone's tax classification because of this change. As it relates to that specific concern, it is already written in Chapter 5A Section 6.4C that says "importing, selling, refining, or distributing" agricultural products is classified as commercial. The rules are solidifying the to reflect it.

Mr. Lydgate mentioned that the purview of the board is to address potential small business concerns. With that said, no agricultural stakeholders were notified of the change. He also mentions of the reclassification of commercial and industrial uses that change agricultural uses to commercial and some agricultural uses to industrial. In the farming industry no one knew about the the rule change. There are some concerns that going through a process of communication and transparency will help to bring up some important issues that should be addressed around the tax classifications.

Mr. Yamanaka also adds that recently, they've gone through some tax appeals in Hawaii County, it opened his eyes to the process the assessors go through. He asks that when there are more classifications and comparing use, is the department now going to compare those specific uses to each other or still include ag property in total? The data is already limited. Looking at the data used they're not always comparing apples to apples, and with the limited data that is on hand are you really following your own guidelines to do assessments and is it harder?

Mr. Mike Hubbard, Real Property Tax Manager at the Department of Finance – County of Kauai explained the rules help to point to a place in writing. More than half of the assessor's job is to find the market of the property the other half is to classify it accordingly. With the data that's out there from the planning department and special use permits, we have an understanding of what's going on on most of the properties. Trying to be specific with the definitions will help the office.

Chair Cundiff reiterates the purview of the board. He acknowledges Mr. Lydgate recommendation of any future changes or new rules on the front end that the agencies include the stakeholders or those who might be impacted to make sure they are engaged. He also mentions Mr. Yamanaka's scenario on value added products and encourages business to take risks and look at different ways to generate revenue and income. What level of tax is an incentive for business to take a risk and try to establish value added products as part of their portfolio?

Being that the public hearing was held, sending the rules back to public hearing is something that the board cannot require the Kauai County to do. Ms. Reiko Matsuyama suggests sending a revised rule that have all the changes except sections C, D and E and leave that status quo and start the process over again to do sections C, D and E. Chair Robert Cundiff does not think that it is necessary from the prospective in that the Kauai County did everything to follow the process that is required.

Mr. Lydgate motioned to move the rules to the Mayor for adoption with a recommendation to conduct an informational/forum meeting with stakeholders and those impacted to discuss. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

IV. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS

1. Update on Board's Fiscal Year 2022 Budget

Chair Cundiff confirms that the budget is established at \$10,800.00 which is the standard budget minus the 10% hold back. Under the current environment, the board will continue with Zoom call meetings that will save the SBRRB money moving forward.

2. Discussion and Action on Creating an Informal Investigative Task Force for the Purpose of Developing and Designing Phase II of the Board's Website to include Content and Features in accordance with Section 92-2.5(b), HRS

Chair Cundiff notes that DBEDT Director Mike McCartney is engaged and onboard with what the board is trying to accomplish. He expressed support over moving into Phase II on development of the website.

Mr. Ritchie gives some background of Phase II which is going to look at a more focused approach to the website and the small business community. It will allow businesses, associations, and trade groups to sign up for very specific notices regarding certain departments or counties. Phase II will allow interactivity to engage more effectively with the small business community.

Chair Cundiff adds that the SBRRB was able to revamp the website a couple years ago with Phase I. The next phase will allow more interaction and intelligence around how the website acts. The intent of Phase II would be using technology to monitor rules that are being introduced and what organizations or industries it may impact and have a more proactive notification sent out. It will be a next level of intelligence.

Mr. Ritchie expressed that he is happy to sit on the Phase II committee. He would like to work with Chair Cundiff and the DBEDT staff to investigate from a technological view on how to include costs, etc. Chair Cundiff suggests looking at the SBRRB Agenda mailing list and update if needed. It is a proactive way to continue to engage with stakeholders until the

SBRRB website can automatically do so. Based on the Sunshine law, there can be two or more board members on this task force if it is fewer members than quorum.

Chair Cundiff moves that the task force will include DBEDT staff Dori Palcovich and Jet'aime Ariola, Chair Cundiff and board member Mark Ritchie. The action will include the authorization of the board to proceed to gather information around designing Phase II and to engage with Hawaii Informational Consortium (HIC). Vice Chair Albitz seconded the motion, and the Board members unanimously agreed.

V. NEXT MEETING - Thursday, September 16, 2021 at 10:00 a.m.

VI. ADJOURNMENT – Mr. Yamanaka made a motion to adjourn the meeting and William Lydgate seconded the motion; the meeting adjourned at 11:27 a.m.

III. Old Business — After Public Hearing

A. Discussion and Action on the Small Business Statement after Public Hearing and Proposed Amendments to HAR Title 5 Chapter 5-11, Notaries Public, promulgated by Department of the Attorney General

SMALL BUSINESS STATEMENT
"AFTER" PUBLIC HEARING TO THE
SMALL BUSINESS REGULATORY REVIEW BOARD
(Hawaii Revised Statutes (HRS), §201M-3)

Department or Agency: Department of the Attorney General

Administrative Rule Title and Chapter: Title 5 Chapter 11

Chapter Name: Notaries Public

Contact Person/Title: Dean Soma, Deputy Attorney General

Phone Number: (808) 586-0817

E-mail Address: Dean.A.Soma@hawaii.gov **Date:** 08/12/2021

A. To assist the SBRRB in complying with the meeting notice requirement in HRS §92-7, please attach a statement of the topic of the proposed rules or a general description of the subjects involved.

B. Are the draft rules available for viewing in person and on the Lieutenant Governor's Website pursuant to HRS §92-7?

☒ Yes ☐ No

(If "Yes," please provide webpage address and when and where rules may be viewed in person. Please keep the proposed rules on this webpage until after the SBRRB meeting.)

I. Rule Description: ☐ New ☐ Repeal ☒ Amendment ☒ Compilation

II. Will the proposed rule(s) affect small business?

☒ Yes ☐ No (If "No," no need to submit this form.)

* "Affect small business" is defined as "any potential or actual requirement imposed upon a small business . . . that will cause a direct and significant economic burden upon a small business, or is directly related to the formation, operation, or expansion of a small business." HRS §201M-1

* "Small business" is defined as a "for-profit corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legal entity that: (1) Is domiciled and authorized to do business in Hawaii; (2) Is independently owned and operated; and (3) Employs fewer than one hundred full-time or part-time employees in Hawaii." HRS §201M-1

III. Is the proposed rule being adopted to implement a statute or ordinance that does not require the agency to interpret or describe the requirements of the statute or ordinance?

☐ Yes ☒ No

(If "Yes" no need to submit this form. E.g., a federally-mandated regulation that does not afford the agency the discretion to consider less restrictive alternatives. HRS §201M-2(d))

IV. Is the proposed rule being adopted pursuant to emergency rulemaking? (HRS §201M-2(a))

☐ Yes ☒ No

(If "Yes" no need to submit this form.)

V. Please explain how the agency involved small business in the development of the proposed rules.

We emailed all the notaries and prospective notaries on June 23, 2021 for comment.

a. Were there any recommendations incorporated into the proposed rules? If yes, explain. If not, why not?

Yes. We are planning on incorporating some of the comments regarding technology requirements into the rules.

VI. If the proposed rule(s) affect small business, and are not exempt as noted above, please provide the following information:

1. A description of how opinions or comments from affected small businesses were solicited.

We published the Notice of Public Hearings on the proposed administrative rules on June 24, 2021 in the Honolulu Star-Advertiser, The Garden Isle, Hawaii Tribune Herald, West Hawaii Today, and The Maui News, as well as on our website. Emailed all notaries and prospective notaries on June 23, 2021.

2. A summary of the public's and small businesses' comments.

Many did not like the new notary book retention requirements. Some had technological comments regarding the Remote Online Notaries Public.

3. A summary of the agency's response to those comments.

The new notary book retention requirements are statutory and cannot be changed by rules. Adopting some of the technological changes.

4. The number of persons who:
 - (i) Attended the public hearing: 38
 - (ii) Testified at the hearing: 5
 - (iii) Submitted written comments: 13

5. Was a request made at the hearing to change the proposed rule in a way that affected small business?

☒ Yes ☐ No

- (i) If "Yes," was the change adopted? ☐ Yes ☒ No

- (ii) If No, please explain the reason the change was not adopted and the problems or negative result of the change.

Because the notary book retention requirement is statutory and cannot be changed by rules.

Small Business Regulatory Review Board / DBEDT
Phone: (808) 586-2594 / Email: DBEDT.sbrrb.info@hawaii.gov

This statement may be found on the SBRRB Website at:
<http://dbedt.hawaii.gov/sbrrb-impact-statements- pre-and-post-public-hearing>

July 2021 Meeting Minutes

C. Discussion and Action on the Proposed Amendments to Section 5A-6.4 of Kauai County Code, Real Property Tax Classification Rules, promulgated by the County of Kauai Department of Finance

Mr. Mike Hubbard, Real Property Tax Manager at the Department of Finance - County of Kauai, explained that the proposed rules represent an amendment to Kauai's tax classification. The rules are intended to create and ensure equity between entities operating in similar fashions.

Kauai's tax system is based on the "actual use" of a property and so the rules will help define those uses. Taxing on "actual use" was established for the County of Kauai in 2013; subsequently, the County promulgated the original rules in 2015. Presently, the initial need to amend these rules arose from two separate changes in the Kauai County Code. Therefore, the amendments in these rules mirror the County Code's changes.

The first change, which was modified in 2020, relates to home exemption, Section 12-6 (h), where the qualifications under the Homestead Act have been strengthened. The second change relates to the residential investor classification under Section 12-6 (i) where the threshold of the assessed value was reduced from \$2 million to \$1.3 million. This section further denotes how to be excluded from the residential investor classification, which is the third highest tax rate. In addition, other sections throughout the chapter have been clarified and modified.

Confirming Chair Cundiff's initial comments, there is not a specific impact to small business but instead the proposed rules create equity across the board. Finally, Mr. Cummins noted that his office will be reaching out to the various stakeholders and educating the businesses that may have, for example, unique circumstances where they have a living unit or dwelling on their properties.

Vice Chair Albitz motioned to move the proposed amendments to public hearing. Second Vice Chair Shick seconded the motion, and the Board members unanimously agreed.

D. Discussion and Action on the Proposed Amendments to HAR Title 5 Chapter 5-11, Notaries Public, promulgated by Department of the Attorney General

Mr. Dean Soma, deputy attorney general at the Department of the Attorney General explained that because Act 54, SLH 2020 added a new online remote notary public designation, these rules needed to be modified. While modifying the rules, the department took the opportunity to update other sections in the rules. Although not a lot was changed, some of the modifications include adding definitions and a "notification of status" with a \$25 fine, if not notified.

Deputy Attorney General Soma stated that many of the larger businesses, such as banks, were more interested in getting the online designation than the smaller businesses. The designation change was prompted by both the pandemic and the companies' needs and interest.

Vice Chair Albitz motioned to move the proposed amendments to public hearing. Ms. Rodighiero seconded the motion and the Board members unanimously agreed.

V. ADMINISTRATIVE MATTERS

A. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS

1. Board's Fiscal Budgets

Chair Cundiff noted that this Board spent a total of \$1,790.73 this past fiscal year. Historically, this Board has had an annual fiscal budget of \$12,000, and during this past year it was reduced to \$10,800 (total of \$12,000 minus a 10% holdback or \$1,200).

Recently, he, Mr. Ritchie and Ms. Palcovich met with DBEDT Director Mike McCartney and discussed several board-related topics - past and current budgets; hybrid meetings, virtual and in-person board meetings; and Phase II of the Board's website.

Overall, Director McCartney is very supportive of this Board and understands the value it brings to the department and to the state, and he will continue to provide his support as needed. We will also continue dialogue with Director McCartney as to what we would like to accomplish going forward, such as Phase II of the Board's website project. Phase II will entail offering more pro-active interaction with small businesses; some of the budget would be used for this next phase.

If in-person meetings were resumed and neighbor island members were to attend the meetings the total expense, which includes the cost for travel, would be approximately \$16,000. However, we will continue in the current mode of operation with remote meetings via Zoom. He added that while more and more state boards are moving towards in-person meetings, we will continue to monitor the situation to see at what point we might be able to conduct in-person meetings keeping in mind that we will need to be sensitive to the cost.

Chair Cundiff noted that effective January 1, 2022, the Sunshine law will allow for virtual meetings. Deputy Attorney General Alison Kato confirmed this and explained that the Sunshine law will change to virtual meetings as long as there is one physical location with audio/visual connection that members of the public can attend. Chair Cundiff added that this new law will allow for hybrid meetings.

Deputy Attorney General Kato also mentioned that the current law does not allow for this but requires all locations to be disclosed; however, presently that is suspended by the Governor's emergency proclamation. Additionally, a new emergency proclamation comes out every two months; the current proclamation end August 6, 2021.

Also, in regard to updating the Board's website, Mr. Ritchie stated that Phase II would allow small businesses to go to the website and specifically sign-up for the department's rules that they would like to receive, rather than receiving an email for every rule that is reviewed by the Board. It was suggested that Phase II of the website be placed on next month's agenda for discussion.

§5-11-8 Acknowledgments; jurats. Every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a notary public~~[-]~~ contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS. The certificate shall include the printed name of the notary public, the expiration date, the ~~[official stamp or]~~ notary seal of the notary public, and identification of the jurisdiction in which the notarial act is performed~~[, identification or description of the document being notarized, which shall be close in proximity to the acknowledgment or jurat, and the number of pages and date of such document]~~. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-15, 456-21)

§5-11-17 Surrender of notary public commission certificate~~[-]~~ and notary seal~~[-]~~, and record book, journal~~[-]~~; retention of journal; failure to comply.
(a) Within ninety days of resignation~~[-]~~ removal from office, from, or revocation or abandonment of, a commission, or the expiration of a [term of office] commission without renewal, the notary public shall:

- (1) Surrender the notary public's commission certificate, including the remote online notary public's commission certificate, if applicable, to the attorney general for the purpose of destruction;
- (2) Surrender the notary public's rubber stamp notary seal to the attorney general for the purpose of defacement; and
- (3) ~~[Deposit]~~ Retain, or cause to be retained, the notary public's ~~[record book with]~~ journal and inform the attorney general~~[-]~~ of the location of the journal.

(b) Upon the death of ~~[the]~~ a current notary public, the notary public's employer ~~[or]~~, personal representative, or any other person knowingly in possession of the notary public's certificate or notary seal shall within ninety days fulfill the requirements of subsection ~~[(a)-]~~ (a)(1) and (2).

(c) Upon the death of a current or former notary public, the notary public's employer, personal representative, or any other person knowingly in possession of the notary public's journal shall transmit the journal to the attorney general or a repository approved by the attorney general as provided in section 456-15(h), HRS, and notify the attorney general of the location of the repository.

~~[(e)]~~ (d) Failure to comply with subsection (a)(2) may result in ~~[a]~~ an administrative fine of not more than \$200. Failure to comply with subsection (a)(3) or (c) may result in ~~[a]~~ an administrative fine of no~~[t]~~ less than \$50 and no~~[r]~~ more than \$500. Failure to comply with any paragraph of subsection (a) shall preclude the reissuance of a notary public's commission. ~~[Complete]~~ Strict compliance with subsection (a) shall be a condition for the reissuance of a notary public's commission. [Eff 5/5/08; am and comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-3, 456-7, 456-15, 456-24)

§5-11-71 Standards for communication technology.

(a) A remote online notary public may not perform a notarial act for a remotely located individual unless the technology identified by the remote online notary public satisfies all of the following:

- (1) Provides continuous synchronous audiovisual feeds;
- (2) Provides sufficient video resolution and

audio clarity to enable the remote online
notary public and remotely located
individual to see and speak with each other
simultaneously through live, real-time
transmission;

- (3) Provides sufficient captured-image
resolution for identity proofing;
- (4) Provides a means of authentication that
reasonably ensures only authorized parties
have access to the audiovisual record of the
performed notarial act;
- (5) Provides for the recording of the remote
online notarial act in compliance with this
chapter in sufficient quality to ensure the
verification of the remote online notarial
act;
- (6) Ensures that any change to or tampering with
an electronic record ~~[before or]~~ is evident
after the electronic notary signature and
notary seal ~~[has]~~ have been affixed and the
remote online notarial act has been
completed ~~[is evident]~~;
- (7) Provides confirmation that the electronic
record presented is the same electronic
record notarized;
- (8) Provides the notary public with a means of
electronically affixing the notary public's
notary seal, signature, and ~~[certification]~~
notarial certificate to the notarized
document based on an electronic technology
standard that utilizes public key
infrastructure (PKI) technology from a PKI
service provider that is X.509 compliant;
- (9) Provides an electronic-format notary journal
that complies with the provisions of chapter
456, HRS, and this chapter to document the
remote online notarial acts;
- (10) Provides that if a remotely located
individual shall exit the workflow or if the
workflow is interrupted for any reason, the
remotely located individual shall restart
the identity verification process under

section 5-11-69 or 5-11-70 from the beginning; and

- (11) Provides security measures the attorney general deems reasonable to prevent unauthorized access to:
- (A) The live transmission of the audiovisual communication;
 - (B) A recording of the audiovisual communication;
 - (C) The verification methods and credentials used in the identity proofing procedure;
 - (D) The electronic records presented for online notarization; and
 - (E) Any personally identifiable information used in the identity proofing.

(b) The online notary public shall immediately cease performing remote online notarial acts and notify the attorney general if:

- (1) The technology no longer permits the remote online notary public to meet the requirements of chapter 456, HRS, or this chapter;
- (2) The vendor ceases to provide the technology, which met the requirements of this section;
- (3) The vendor has failed to protect from unauthorized access any information it is required to protect under chapter 456, HRS, this chapter, or any other laws in Hawaii; or
- (4) Any other grounds that may materially affect the ability of notaries public to meet the requirements of Hawaii law. [Eff and comp
] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-23, 456-25)

§5-11-72 Electronic signature and electronic notary seal; electronic stamping device; electronic notarial certificate. (a) In addition to the rubber

stamp notary seal required for all notaries public pursuant to section 456-3, HRS, and section 5-11-5, a remote online notary public shall obtain and keep one or more electronic stamping devices. An electronic stamping device shall consist of a digital certificate complying with the X.509 standard adopted by the International Telecommunication Union. A remote online notary public shall attach or logically associate the remote online notary public's electronic signature and electronic notary seal to an electronic document that is the subject of a notarial act for a remotely located individual by use of a digital certificate. A remote online notary public may not perform a notarial act for a remotely located individual if the digital certificate:

- (1) Has expired;
- (2) Does not comply with section 5-11-71;
- (3) Is invalid; or
- (4) Is incapable of authentication at the time the notarial act is performed.

(b) Prior to the application of a digital certificate on an electronic document, the remote online notary public shall apply their electronic notary seal, ~~[on]~~ which, when logically associated with an electronic document, shall contain the name of the notary public, the commission number of the notary public, and the words "notary public" and "State of Hawaii" ~~[and utilizes tamper-evident technology]~~.

~~[(b) The remote online notary public shall authenticate all of the notary public's notarial acts, attestations, certifications, and instruments with the notary public's electronic notary seal, using an electronic stamping device, contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS.]~~

~~(c) A remote online notary public shall attach or logically associate the remote online notary public's electronic signature and electronic notary seal to the electronic notarial certificate in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident.]~~

[~~(d)~~](c) The remote online notary public shall use technology from a third-party provider of the communication technology for an electronic stamping device, electronic signature, electronic notary seal, and electronic notarial certificate.

(e) The electronic notarial certificate shall comply with sections 456-21 and 456-23, HRS, the form of certificate provided in section 502-41, HRS, if applicable, or the form of certificate provided by other applicable law, and this chapter, and shall indicate that the notarial act was performed using communication technology.

(f) A remote online notary public shall safeguard and maintain sole control of the remote online notary public's electronic notary seal and electronic stamping device by means of use of a password or other secure method of authentication.

(g) Upon resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, the remote online notary public shall destroy or disable the remote online notary public's electronic stamping device, including but not limited to, any coding, disk, digital certificate, card, software, or password, that enables the notary public to attach the electronic notary seal

to an electronic record. The remote online notary public shall submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal in which the remote online notary public declares that the electronic stamping device was disabled and indicates the date and manner in which the electronic stamping device was disabled. Failure to comply with this section may result in an administrative fine of \$200. [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-21, 456-23, 456-35, 503-41)

DEPARTMENT OF THE ATTORNEY GENERAL

Amendment and Compilation of Chapter 5-11
Hawaii Administrative Rules

July 1, 2021

1. Chapter 5-11, Hawaii Administrative Rules,
entitled "Notaries Public", is amended and compiled to
read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 5

DEPARTMENT OF THE ATTORNEY GENERAL

CHAPTER 5-11

NOTARIES PUBLIC

Subchapter 1 General provisions

§5-11-1	Purpose
<u>§5-11-1.5</u>	<u>Definitions</u>
§5-11-2	Commission required to act as a notary public
§5-11-3	Conduct
§5-11-4	Powers
<u>§5-11-4.5</u>	<u>Prohibited acts</u>
§5-11-5	[Official] Notary seal
§5-11-6	Official signature
§5-11-7	Acceptable forms of identification of signers
§5-11-8	Acknowledgments; jurats

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SUBCHAPTER 1

GENERAL PROVISIONS

§5-11-1 Purpose. This chapter is intended to clarify and implement chapter 456, Hawaii Revised Statutes (HRS), as amended, to the end that the ~~[provision]~~ provisions thereunder, for the protection of the general public, may best be effectuated and the public interest most effectively served. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-8)

§5-11-1.5 Definitions. As used in this chapter, unless the context requires otherwise:

"Affirmation" or "oath" means a solemn pledge made orally or in writing by a person to attest to the truth of the person's statement.

"Appear personally" means:

- (1) Being in the same physical location as another person and close enough to see, hear, communicate with, and exchange proof of the signer's signature and identity with that person; or
- (2) Interacting with a remotely located individual by means of communication

technology that complies with the provisions of section 456-23, HRS, and this chapter.

"Conviction" means a formal judgment entered by a court based on a verdict or plea of guilty or a plea of nolo contendere.

"Department" means the department of the attorney general.

"Electronic notary seal" or "electronic seal" means an electronic image that contains information attached to or logically associated with an electronic record and that contains the notary public's name, the notary public's commission number, and the words "notary public" and "State of Hawaii".

"Electronic signature" has the same meaning as in section 456-1.6, HRS.

"Identity proofing" has the same meaning as in section 456-23, HRS.

"Notarial act" has the same meaning as in section 456-1.6, HRS.

"Notary public" has the same meaning as in section 456-1.6, HRS.

"Person" means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Remote online notary public" has the same meaning as in section 456-23, HRS.

"Signature" has the same meaning as in section 456-1.6, HRS.

"Stamping device" has the same meaning as in section 456-1.6, HRS. [Eff and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-2, 456-13, 456-22, 456-23, 456-24, 456-25)

§5-11-2 Commission required to act as a notary public. No person shall act as a notary public, [~~or~~] advertise or represent oneself as a notary public, or

§5-11-3

perform notarial acts, without a current commission
[~~previously~~] obtained from the attorney general. [Eff
5/5/08; comp 3/12/15; am and comp
] (Auth: HRS §§28-10.8, 456-1.5,
456-8, 456-23) (Imp: HRS §§456-1, 456-26)

§5-11-3 Conduct. Every notary public shall
perform [~~notary public duties~~] notarial acts in
accordance with chapter 456, HRS, this chapter, [~~and
the notary public code of professional responsibility
as adopted by the National Notary Association, and as
any of these may be amended.~~] other laws in Hawaii,
and official guidelines (e.g., Notary Manual) that
pertain to notarial acts and shall follow recognized
industry best practice standards that do not conflict
with Hawaii law. [Eff 5/5/08; comp 3/12/15; am and
comp] (Auth: HRS §§28-10.8, 456-
1.5, 456-8, 456-23) (Imp: HRS §456-7)

§5-11-4 Powers. Every notary public shall take
acknowledgments, administer oaths and affirmations,
witness the signing of documents, attest to the
identity of the signer of a document, note protests,
and perform any other act permitted by chapter 456,
HRS. [Eff 5/5/08; comp 3/12/15; comp]
(Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp:
HRS §§456-10, 456-11, 456-13, 456-14, 456-17, 456-18,
456-19, 456-23)

§5-11-4.5 Prohibited acts. (a) A notary public
shall not do any of the following:

- (1) Refuse to perform a lawful and proper
notarial act because of the race; sex,
including gender identity or expression;
sexual orientation; color; ancestry;
nationality; ethnicity; religion; politics;

advanced age; or disability, including the use of a service animal, of the person appearing before the notary public; or any disagreement with the statements or purpose of a document;

- (2) Base the charging of a fee for performing a notarial act or the amount of the fee on the race; sex, including gender identity or expression; sexual orientation; color; ancestry; nationality; ethnicity; religion; politics; advanced age; or disability, including the use of a service animal, of the person appearing before the notary public; or any disagreement with the statements or purpose of a document;
- (3) Notarize the notary public's own signature;
- (4) Perform a notarial act if the notary public has an actual and apparent conflict of interest regarding the transaction in question;
- (5) Deliver a signed notarial certificate to another person and authorize that person to attach the certificate to a document outside of the notary public's presence; or
- (6) Provide legal advice, unless the notary public is an attorney licensed to practice law in this State.

(b) Nothing contained in this section shall be construed to limit or deny the enforcement of any provision of chapters 456 and 502, HRS, or this chapter.

(c) Nothing contained in subsection (a)(2) shall be construed to prohibit reducing or waiving a fee at the notary public's discretion, provided that doing so is not done for an unlawful or discriminatory purpose.

[Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-1.5, 456-2, 456-9, 456-17, 456-22, 456-23, 456-24, 456-26)

§5-11-5 [Official] Notary seal. (a) A notary public shall obtain and keep [an official] a rubber stamp notary seal [of one type, either an engraved seal or a rubber stamp facsimile seal, on] which, when stamped or impressed upon a tangible document, shall [be inscribed] clearly show the name of the notary public, the commission number of the notary public, and the words "notary public" and "State of Hawaii". The notary public shall not possess more than one rubber stamp notary seal at a time.

(b) The notary public shall authenticate all of the notary public's [official] notarial acts, attestations, certifications, and instruments with the notary public's [official] notary seal[-] contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS.

(c) The [official] rubber stamp notary seal of every notary public [shall be affixed by either an engraved seal or a rubber stamp facsimile seal which] shall be a circular, [not over two inches in diameter,] rubber stamping device with a serrated or milled edge border between one inch and two inches in diameter and shall include the required wording and information specified in subsection (a).

(d) The notary public shall safeguard and maintain sole control of the notary seal.

[(-d)] (e) The notary public shall surrender the rubber stamp notary [public's] seal to the attorney general within ninety days of resignation[-, removal from office,] from, or revocation or abandonment of, a commission, or the expiration of a [term of office] commission without renewal. Failure to comply with this requirement may result in [a] an administrative fine [not more than] of \$200. [Eff 5/5/08; am and comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-3, 456-23)

§5-11-6 Official signature. (a) A notary public shall sign on every notarial certificate, at

the time of notarization, the notary public's official signature as filed with the clerk of the circuit court in the circuit in which the notary public resides and as the notary public's name appears on the notary public's notary seal.

(b) The notary public shall always add to the notary public's official signature the typed or printed name of the notary public and a statement indicating the date of expiration of the notary public's commission. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1.6, 456-3, 456-23)

§5-11-7 Acceptable forms of identification of signers. ~~[No acknowledgment, jurat, or other instrument shall be taken,] A notary public shall not perform a notarial act unless [the person offering to make the acknowledgment, jurat, or instrument is personally known to the notary public to be the person whose name is subscribed to the acknowledgment, jurat, or instrument as a party thereto, or is proved to be such by the oath or affirmation of a credible witness known to the notary public, or by production of a current identification card or document issued by the United States, this State, any other state, or a national government that contains the bearer's photograph and signature.]~~ there is proof of the signer's signature and identity as defined in section 456-1.6, HRS, or as otherwise provided in sections 5-11-69 and 5-11-70. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1.6, 456-15, 456-20, 456-22)

§5-11-8 Acknowledgments; jurats. Every acknowledgment or jurat shall be evidenced by a certificate signed and dated by a notary public[~~-~~]

contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS. The certificate shall include the printed name of the notary public, the ~~[official stamp or]~~ notary seal of the notary public, and identification of the jurisdiction in which the notarial act is performed~~[- identification or description of the document being notarized, which shall be close in proximity to the acknowledgment or jurat, and the number of pages and date of such document]~~. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-15, 456-21)

§5-11-9 ~~[Record book; suspension for failure to deposit.]~~ Journal. (a) A notary public shall ~~[record all of the notary public's transactions, as prescribed in chapter 456, HRS.]~~ create, maintain, and retain a journal in which the notary public chronicles all notarial acts performed by the notary public in accordance with the requirements of section 456-15, HRS, and this chapter.

(b) The ~~[record book]~~ tangible journal shall be bound with a soft cover and shall not exceed eleven inches in height and sixteen and one-half inches in width when fully opened.

(c) The pages of the ~~[record book]~~ tangible journal shall be consecutively numbered.

(d) The notary public shall always provide and print legibly on the information page of each ~~[record book]~~ tangible journal the notary public's name, business address, commission number, ~~[and]~~ commission expiration date, ~~[the book]~~ journal number, and the beginning and ending dates of the notarial acts recorded in that ~~[book-]~~ journal.

(e) The notary public shall always print legibly the notary public's name on the top left corner and the notary public's commission number on the top right corner of each set of pages of transactions in each ~~[record book-]~~ tangible journal.

(f) The notary public shall ~~[deposit]~~ retain the

notary public's ~~[record book with the attorney general within ninety days of the end date of the notary public's commission.]~~ journal for ten years after the performance of the last notarial act chronicled in the journal. The notary public shall provide to the attorney general the location of the journal upon resignation from, or revocation, abandonment, or suspension of the notary public's commission, or the expiration of a commission without renewal. At any time, the journal shall be subject to an audit pursuant to section 456-15, HRS. Failure to comply with this requirement~~[, after notice to the notary and opportunity to be heard, shall cause the notary's commission to be suspended until the attorney general receives the notary record books for the prior commission term.~~ In addition, the failure to deposit ~~notary record books]~~ may result in [a] an administrative fine of no less than \$50 and no more than \$500. [Eff 5/5/08; am and comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-15)

§5-11-10 Notification and filing of names, addresses, and changes; failure to notify. (a) Each notary public shall file with the attorney general the notary public's name, employer, residence and business addresses, [and] telephone numbers, email address, and occupation ~~[with the attorney general,]~~ and shall notify the attorney general of any change, in writing, within thirty days of the change.

(b) The notice from the notary public of the notary public's name change shall state the old and new names and the effective date of the notary public's name change, and shall include a copy of the legal documentation recording the name change and the new signature of the notary public.

(c) The notice from the notary public of the notary public's address change shall state the old and new addresses of the notary public's residence, if there is a change in the notary public's residence

address, the old and new addresses of the notary public's business, if there is a change in the notary public's business address, and the effective date of the notary public's address change.

(d) Failure to provide [~~written~~] timely written notification to the attorney general of any change shall subject the notary public to a \$25 administrative fine. Failure to provide [~~written~~] timely written notification to the attorney general of any change of address that results in renewal forms being mailed to an incorrect address shall subject the notary public to a \$50 administrative fine. [Eff 5/5/08; am and comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9)

§5-11-10.5 Notification of status change. (a) Each notary public or the notary public's representative or guardian shall notify the attorney general in writing of an adjudication of the notary public's incompetency within thirty days of the adjudication.

(b) Each notary public shall notify the attorney general in writing of a criminal conviction against the notary public of any felony, or a misdemeanor related to the qualifications, functions, or duties of the notary public or involving fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses.

(c) Each notary public shall notify the attorney general in writing of any professional disciplinary decision issued against the notary public in this or another jurisdiction within thirty days of the disciplinary decision.

(d) Failure to provide timely written notification to the attorney general of any change, as prescribed under this section, shall subject the notary public to an administrative fine of \$25 per violation. [Eff and comp] (Auth:

HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9)

~~[§5-11-11 Display of commission; hours of business. (a) A sign, no smaller than three inches by five inches, bearing the words "notary public" shall be conspicuously displayed within the premises of the place of business where the notary public is employed.~~

~~(b) A notary public shall provide notarial services to the public during all normal business hours of operation where the notary public is employed.~~

~~(c) This section shall not apply to notaries in government service.] [Eff 5/5/08; comp 03/12/15; R] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)~~

§5-11-12 Term of commission. The term of [office] commission of a notary public shall be four years from the date of the notary public's commission, unless sooner terminated by the notary public's resignation, death, or abandonment of [office,] commission, or revoked or suspended by action of the attorney general. Any notarial act performed after the termination, revocation, or suspension of a commission shall be invalid. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24, 456-26)

~~[§ 5-11-13. **Forfeited Commission.** (a) The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal~~

~~by the date of expiration of the notary public's commission. A failure to renew shall be deemed knowingly if notice of renewal is sent to the last address on file for the notary public and the notary public fails to complete all the requirements of this subsection.~~

~~(b) Any person seeking to restore the person's forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission.] [Eff 5/5/08; comp 03/12/15; R] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)~~

~~[§ 5-11-14. Suspended Commission. No commission shall be suspended by the attorney general for a period exceeding five years. A person whose commission has been suspended may apply for reinstatement of the commission upon complete compliance with all terms and conditions imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees. If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited.] [Eff 5/5/08; comp 03/12/15; R] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)~~

~~[§ 5-11-15. Revoked Commission. A person may apply for a new commission after five years from the effective date of the revocation of the commission by filing an application and complying with all current requirements for new applicants.] [Eff 5/5/08; comp 03/12/15; R] (Auth: HRS §§28-10.8, 456-8) (Imp: HRS §456-1)~~

§5-11-16 Resignation of commission. (a) A notary public may resign the notary public's

commission, and shall:

- (1) Surrender the notary public's commission certificate~~[,]~~ and rubber stamp notary seal[, and notarial record books] as provided in ~~[section]~~ sections 5-11-5(e) and 5-11-17(a)[+] and provide to the attorney general the location of the journal as provided in section 5-11-9(f); and
 - (2) Cease conducting all notarial services.
 - (b) The resignation or surrender shall not bar jurisdiction by the attorney general to proceed with any investigation, action, or proceeding to revoke, suspend, condition, or limit the notary public's commission or fine the notary public.
 - (c) A person may obtain a new commission by successfully applying as a new applicant should the person desire to engage in any notarial services.
- [Eff 5/5/08; comp 3/12/15; am and comp
] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-3, 456-15, 456-24)

§5-11-17 Surrender of notary public commission certificate~~[,]~~ and notary seal[, and record book, journal]; retention of journal; failure to comply.

(a) Within ninety days of resignation~~[, removal from office,]~~ from, or revocation or abandonment of, a commission, or the expiration of a [term of office] commission without renewal, the notary public shall:

- (1) Surrender the notary public's commission certificate, including the remote online notary public's commission certificate, if applicable, to the attorney general for the purpose of destruction;
- (2) Surrender the notary public's rubber stamp notary seal to the attorney general for the purpose of defacement; and
- (3) ~~[Deposit]~~ Retain the notary public's ~~[record book with]~~ journal and inform the attorney general~~[,]~~ of the location of the journal.

(b) Upon the death of ~~[the]~~ a current notary public, the notary public's employer ~~[or]~~, personal representative, or any other person knowingly in possession of the notary public's certificate or notary seal shall within ninety days fulfill the requirements of subsection ~~[(a)-]~~ (a)(1) and (2).

(c) Upon the death of a current or former notary public, the notary public's employer, personal representative, or any other person knowingly in possession of the notary public's journal shall transmit the journal to the attorney general or a repository approved by the attorney general as provided in section 456-15(h), HRS, and notify the attorney general of the location of the repository.

~~[(e)]~~ (d) Failure to comply with subsection (a)(2) may result in ~~[a]~~ an administrative fine of not more than \$200. Failure to comply with subsection (a)(3) or (c) may result in ~~[a]~~ an administrative fine of no~~[t]~~ less than \$50 and no~~[t]~~ more than \$500. Failure to comply with any paragraph of subsection (a) shall preclude the reissuance of a notary public's commission. ~~[Complete]~~ Strict compliance with subsection (a) shall be a condition for the reissuance of a notary public's commission. [Eff 5/5/08; am and comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-3, 456-7, 456-15, 456-24)

§5-11-18 Loss, misplacement, or theft of notary public certificate, notary seal, or ~~[record book-]~~ journal. Within ten days after loss, misplacement, or theft of the notary public's ~~[official]~~ notary seal or ~~[notarial record book]~~ journal or both, a notary public shall ~~[deliver]~~ transmit written notification to the attorney general of the loss, misplacement, or theft. The notary public also shall inform the appropriate law enforcement agency in the case of theft and deliver a copy of the law enforcement agency's report of the theft to the attorney general. Failure to comply with this section shall result in an an

[\$25] administrative fine[-] of \$20. [Eff 5/5/08; am
and comp 3/12/15; am and comp]
(Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp:
HRS §§456-3, 456-9, 456-15)

SUBCHAPTER 2

APPLICATIONS

§5-11-21 Application for notary public commission. (a) Each applicant for a notary public commission shall complete and file an application with the attorney general. A completed application shall include:

- (1) A non-refundable application fee;
- (2) A letter of character recommendation from a person residing in this State, who is not a relative or an employer of the applicant and who can attest to the applicant's honesty, trustworthiness, financial integrity, and moral character; and
- (3) A letter of justification from the applicant's employer[7] or, if the applicant is self-employed, from the applicant, explaining in detail the reasons why the commission is being sought. ~~[The letter shall also contain a statement by the employer or applicant, if the applicant is self-employed, acknowledging that a notary public is a public officer and that the applicant would be permitted to serve the general public in such capacity during the employer's or applicant's normal business hours.]~~

(b) The application may require the applicant to provide the following:

- (1) The applicant's legal name;
- (2) Verification that the applicant is at least

- eighteen years of age;
- (3) The applicant's current residence, business, ~~[and]~~ mailing, and email addresses;
 - (4) The date and place of ~~[any]~~ a conviction of [a penal crime:] any felony, or a misdemeanor related to the qualifications, functions, or duties of a notary public or involving fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses;
 - (5) Proof that the applicant is a United States citizen, a United States national, or an alien authorized to work in the United States; ~~[and]~~
 - (6) Proof of the applicant's identity by a current government-issued photo identification; and
 - (7) Proof that the applicant is a resident of the State;
 - (8) Proof that the applicant has executed an official surety bond that has been approved by a judge of the circuit court;
 - (9) Any other information the attorney general may require to investigate the applicant's qualifications for a notary public commission.

(c) When an application is made for a commission as a government notary public, the application shall be accompanied by a letter of justification from the head of every department (which includes any department, board, commission, bureau, or establishment of the United States, the State, or any political subdivision thereof) where the applicant is employed and shall designate the applicant to perform, without charge, the services of a notary public in all matters of business pertaining to the business of the governmental entity employing the applicant.

~~[(d) Each applicant shall have the application properly notarized by a notary public currently commissioned in this State.] [Eff 5/5/08; comp~~

3/12/15; am and comp] (Auth: HRS
§§28-10.8, 456-1.5, 456-2, 456-5, 456-8, 456-23)
(Imp: HRS §§456-1, 456-9, 456-18, 456-24)

§5-11-22 Action on application. (a) Unless otherwise provided by law, the attorney general shall take the following actions within [~~one year~~] six months after the filing of a complete application for a commission:

- (1) If the attorney general deems appropriate, conduct an investigation of the applicant; and
- (2) After completing any necessary investigation, provide written notification to the applicant of the [~~decision regarding~~] status of the application for a commission. If the application is denied, written notification of the denial shall state the reason for denying the application and shall inform the applicant of the right to a hearing in accordance with chapter 91, HRS, and chapter 5-1.

(b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the attorney general within ninety days from the date the application is first filed with the attorney general. The attorney general shall not be required to act on any abandoned application, and the abandoned application may be destroyed by the attorney general.

[Eff 5/5/08; comp 3/12/15; am and comp
] (Auth: HRS §§28-10.8, 456-1.5,
456-8, 456-22) (Imp: HRS §§28-10.8, 91-13.5, 456-8,
456-24)

§5-11-23 Application for renewal of notary public commission. (a) Each notary public shall be responsible for timely renewing the notary public's

commission and satisfying the renewal requirements provided by law. A completed renewal application received by the attorney general [~~before or on the notary public's current date of~~] within sixty calendar days prior to the expiration of the notary public's current commission shall be considered timely filed.

(b) At the time of commission renewal, each notary public shall submit a completed renewal application, pay all applicable fees, and comply with any other requirement provided by law.

(c) The failure to timely renew a commission, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement may cause the commission to be automatically forfeited.

~~[(d) Each applicant shall have the renewal application properly notarized by a notary public, other than the applicant, currently commissioned in this State.]~~ [Eff 5/5/08; comp 3/12/15; am and comp
] (Auth: HRS §§28-10.8, 456-1.5,
456-8, 456-23) (Imp: HRS §§456-1, 456-24)

SUBCHAPTER 3

EXAMINATIONS

§5-11-32 Examination. (a) No notary public commission shall be issued to any person unless the person pays the examination fee, and takes and passes a written examination as prescribed by the attorney general. The minimum passing score is eighty per cent. Failure to obtain a passing score shall result in failure of examination, and no commission shall be issued.

(b) The applicant shall take the examination on the date specified on the notification of approval of the application for a commission and of the scheduled examination date. Failure to take the notary public

examination on the scheduled examination date without advance notice, as follows, to the attorney general to reschedule the examination shall require that the applicant submit a new application for a notary public commission with updated supporting letters and also pay a \$25 no-show examination fee. The fee to reschedule an examination shall be \$15 if an applicant requests to reschedule more than forty-eight hours before the examination. The fee to reschedule an examination shall be \$20 if the applicant requests to reschedule less than forty-eight hours before the examination.

(c) The attorney general shall designate the locations and times of the examination.

(d) The attorney general shall notify an applicant in writing of the examination result within thirty calendar days of the examination.

(e) An applicant who fails to attain a passing score may take a reexamination without submitting a new application, provided that the applicant requests, pays the examination fee, and reschedules a reexamination within fourteen calendar days from the date of the notification of the applicant's failure to attain a passing score on the first examination. If the applicant fails to request, pay for, and reschedule a reexamination within the fourteen calendar days, the applicant shall submit a new application and pay the applicable application and examination fees.

(f) An applicant who fails the examination twice shall wait ninety days from the date of the last examination to reapply for a notary public commission.

[Eff 5/5/08; am and comp 3/12/15; am and comp
] (Auth: HRS §§28-10.8, 456-1.5,
456-8, 456-23) (Imp: HRS §§456-1, 456-7, 456-24)

§5-11-33 Examination subject matter. The examination shall test whether applicants have a reasonable knowledge of the general principles and practices of ~~[notary public duties,]~~ notarial acts,

and the laws and rules pertaining to notaries public, including chapter 456, HRS, sections 502-41 to 502-74, HRS, and this chapter. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-7, 456-24)

SUBCHAPTER 4

DISCIPLINARY SANCTIONS

§5-11-39 Grounds for refusal to renew, reinstate, or restore, and for revocation, suspension, denial, or condition of commissions. [~~+(a)+~~] In addition to any other acts or conditions provided by law, the attorney general may refuse to renew, reinstate, or restore, or may revoke, suspend, or deny[, ~~or condition,~~] a commission of any applicant or notary public who violates any of the provisions of chapter 456, HRS, and this chapter, and [~~te~~] may seek administrative fines for each occurrence or [~~te~~] otherwise discipline a former or current notary public for any cause authorized by law, including but not limited to the following:

- (1) Failing to meet and sustain the conditions and requirements necessary to maintain a commission;
- (2) Submitting an application for a new commission, renewed commission, restoration of a forfeited commission, or reinstatement of a suspended commission that contains a false statement, an omission of fact, or a substantial misstatement;
- (3) Failing to complete the processing of the notary public's commission by filing the notary public's commission with the clerk of the circuit court of the judicial circuit in which the notary public resides;

- (4) Failing to maintain a business or residence address in the State while practicing as a notary public in the State;
- (5) Being incapable of reading, writing, or speaking the English language with understanding;
- (6) Allowing the notary public's name or title to be used deceptively, fraudulently, or in false or misleading advertising, or making untruthful or improbable statements;
- (7) Being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, opium, or cocaine, or other drugs or derivatives of a similar nature;
- (8) Practicing as a notary public while the ability to practice is impaired by alcohol, drugs, or mental instability, or substantially impaired by physical disability;
- (9) Procuring a commission through fraud, misrepresentation, or deceit;
- (10) Professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of a notary public;
- (11) Failure to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
- ~~[(12) Conduct or practice contrary to the notary public code of professional responsibility as adopted by the National Notary Association;~~
- ~~[(13) Violating any condition or limitation upon which a conditional or temporary commission was issued;]~~
- [~~(14)~~] (12) Engaging in business under a past or present commission issued pursuant to the notary public laws, in a manner causing injury to one or more members of the public;
- [~~(15)~~] (13) Failure to comply with, observe, or adhere to any law in a manner such that the attorney general deems the holder of a

notary public commission to be unfit or an improper person to hold a commission;

- [~~(16)~~] (14) Revocation, suspension, restriction, or denial of a professional license or notary public commission if that action was for misconduct, dishonesty, or any cause that relates to the duties or responsibilities of a notary public;
- [~~(17)~~] (15) Criminal conviction, whether by nolo contendere or otherwise, of [~~a crime~~] any felony, or a misdemeanor related to the qualifications, functions, or duties of a notary public~~7~~ or involving theft, fraud, dishonesty, or false statement;
- [~~(18)~~] (16) Failure to report in writing to the attorney general any disciplinary decision issued against the notary public or the applicant in this jurisdiction or another jurisdiction within thirty days of the disciplinary decision; and
- [~~(19)~~] (17) Violating this chapter, the applicable laws governing notaries public, or any rule or order of the attorney general. [Eff 5/5/08; am and comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-40 Forfeited commission. (a) The commission of a notary public is forfeited if the notary public knowingly fails to submit a completed renewal application, pay the renewal fee, or complete the processing and filing of a commission for renewal by the date of expiration of the notary public's commission. A failure to renew shall be deemed knowingly if notice of renewal is sent to the last address on file for the notary public and the notary public fails to complete all the requirements of this subsection.

(b) Any person seeking to restore the person's

forfeited commission more than one year from the date of expiration of the commission shall reapply as a new applicant for a notary public commission. [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-41 Suspended commission. A notary public commission may be suspended by the attorney general for a period not exceeding ten years. A person whose commission has been suspended pursuant to section 5-11-39 may apply for reinstatement of the commission upon strict compliance with all terms and conditions imposed by the order of suspension. The application for reinstatement shall be accompanied by all applicable fees. If the person fails to file for reinstatement within thirty days after the end of suspension, the person's commission shall be forfeited. [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-42 Revoked commission. A person whose commission is revoked pursuant to section 5-11-39 may apply for a new commission, unless the revocation is permanent, after five years from the effective date of the revocation of the commission by filing an application and complying with all current requirements for new applicants. [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

SUBCHAPTER 5

FEEES AND ADMINISTRATIVE FINES

§5-11-46 Fees and administrative fines. (a)
~~[Notwithstanding any law to the contrary,]~~ Pursuant to
section 456-9, HRS, the attorney general shall charge
and collect the following fees, ~~[and administrative~~
~~fines,]~~ which shall be nonrefundable:

- (1) Application for ~~[commission of]~~ notary
public commission, \$20;
- (2) Application for renewal of notary public
commission, \$20;
- (3) Application for restoration of forfeited
commission, \$10;
- (4) Application for reinstatement of suspended
commission, \$10;
- (5) Issuance of notary public commission, \$100;
- (6) Renewal of notary public commission, \$100;
- (7) Each examination, \$10;
- (8) Administrative fee to process and catalogue
notary ~~[record books,]~~ public journals, \$10;
- (9) Restoration of forfeited commission, \$80;
- (10) Change in name, employer, residential, or
business address, telephone number, or
judicial circuit, \$10;
- (11) Notary public manual, \$3 if the manual is
picked up at the notary public office or \$5
if the manual is to be mailed;
- (12) Certification of each notarial transaction
from a notary public's journal in the
disposition of the attorney general, \$5 per
notarial transaction;
- (13) Copying, per printed page, 25 cents;
- (14) Replacement commission certificate, \$10;
- (15) Request to reschedule examination more than
forty-eight hours before the examination,
\$15;
- (16) Request to reschedule examination less than
forty-eight hours before the examination,
\$20;
- (17) Administrative fee to process returned
documents from the court, \$15;
- (18) Application for remote online notary public
commission, \$20;

- (19) Application for renewal of remote online notary public commission, \$20;
- (20) Issuance of remote online notary public commission, \$100;
- (21) Renewal of remote online notary public commission, \$100;
- (22) Administrative fee to process and catalogue audiovisual recordings, \$10; and
- (23) Any other fees or charges referenced in chapter 456, HRS, or this chapter.

(b) The attorney general may impose and collect the following administrative fines for each occurrence of the following:

- ~~[+11+]~~ (1) Failure to timely notify the attorney general of change of any item specified in ~~[paragraph (10),]~~ section 5-11-10, \$25 per occurrence;
- ~~[+12+]~~ (2) Failure to timely notify the attorney general of change of address that results in mailing of renewal forms to incorrect address, \$50;
- ~~[+13+]~~ (3) Failure to timely notify the attorney general of loss, misplacement, or theft of the notary public's ~~[official]~~ notary seal or ~~[record book,]~~ journal, ~~[\$25+]~~ \$20;
- ~~[+14+]~~ ~~Notary public manual, \$3 if the manual is picked up at the notary public office or \$5.00 if the manual is to be mailed;~~
- ~~+15+]~~ ~~Certification of each notarial transaction from a notary public's record book in the disposition of the attorney general, \$5 per notarial transaction;~~ ~~(16) Copying, per printed page, 25 cents;~~
- ~~+17+]~~ ~~Replacement commission certificate, \$10;~~
- ~~+18+]~~ ~~Request to reschedule examination more than forty-eight hours before the examination, \$15;~~
- ~~+19+]~~ ~~Request to reschedule examination less than forty-eight hours before the examination, \$20;~~
- ~~+20+]~~ (4) Failure to appear at the examination without request or notification to

reschedule examination received prior to the time of the examination, \$25; ~~[and]~~

- ~~[(+21+)]~~ (5) Failure to ~~[pick-up]~~ pick up commission certificate from the attorney general within sixty days of notification from the attorney general of the availability of the certificate, \$40;
- (6) Failure to surrender the notary public's rubber stamp notary seal to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, \$200;
- (7) Failure to surrender the notary public's commission certificate to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, \$200;
- (8) Failure to destroy or disable the remote online notary public's electronic stamping device and to submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal that the electronic stamping device was destroyed or disabled, \$200;
- (9) Possessing more than one rubber stamp notary seal at a time, \$200;
- (10) Failure to retain the notary public's journal for ten years after the performance of the last notarial act chronicled in the journal, no less than \$50 and no more than \$500;
- (11) Failure to comply with the audit or inspection of the notary public's journal by the attorney general, no less than \$50 and no more than \$500;
- (12) Failure to inform the attorney general of the location of the notary public's journal, no less than \$50 and no more than \$500;

- (13) Failure to transmit the notary public's journal to the attorney general or a repository approved by the attorney general upon the notary public's death, no less than \$50 and no more than \$500;
- (14) Failure to timely notify the attorney general of the notary public's status change as required by section 5-11-10.5, \$25; and
- (15) Any other administrative fines referenced in chapter 456, HRS, or this chapter.

~~[(b)]~~ (c) All fees and administrative fines prescribed by this chapter shall be deposited to the credit of the department of the attorney general's notaries public revolving fund.

(d) All unpaid fees and administrative fines shall constitute a debt due and owing to the State.

[Eff 5/5/08; am and comp 3/12/15; am and comp
] (Auth: HRS §§28-10.8, 456-1.5,
456-8, 456-23) (Imp: HRS §§456-9, 456-24)

SUBCHAPTER 6

PRACTICE AND PROCEDURE

§5-11-51 Administrative practice and procedure.

The rules of practice and procedure for notaries public shall be as provided in chapter 5-1, the rules of practice and procedure for administrative process of the department of the attorney general. [Eff 5/5/08; comp 3/12/15; comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-1)

§5-11-52 Notification of denial of application for commission or renewal, or of proposed disciplinary action. In the event an application for commission or

renewal is denied, or a notary public is to be disciplined, the attorney general shall provide written notification to the applicant or notary public of the attorney general's intended action, which shall include a concise statement of the reasons therefor and a statement informing the applicant or notary public of the right to a hearing if the applicant or notary public so desires. [Eff 5/5/08; comp 3/12/15; comp] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-53 Demand for a hearing. Any person whose application is denied, or notary public who is to be disciplined by the attorney general, shall be entitled to a hearing if a demand for hearing is filed with the attorney general within sixty days of the date of the letter informing the applicant or notary public of the denial of application, or intent to discipline the notary public, respectively. [Eff 5/5/08; comp 3/12/15; am and comp] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-54 Proceedings upon demand for a hearing. If a demand for a hearing is filed within sixty days of the date of the denial or intent to discipline, the attorney general shall order a hearing pursuant to chapter 91, HRS, and chapter 5-1. [Eff 5/5/08; comp 3/12/15; comp] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§91-13.1, 456-1, 456-24)

§5-11-55 Exceptions. If any requirement of this chapter results in undue hardship for the applicant or notary public, the attorney general may, upon written request from the applicant or notary public, grant an

exception to that requirement if the attorney general determines such action to be in the best interest of the State. [Eff 3/12/15; comp 3/12/15; comp] (Auth: HRS §§28-10.8, 91-9, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-9, 456-24)

SUBCHAPTER 7

REMOTE ONLINE NOTARIZATION

§5-11-61 Authority to perform remote online notarization. No person shall perform notarial acts for remotely located individuals or advertise or represent oneself as a notary public who is able to do so, without a current commission as a remote online notary public obtained from the attorney general. [Eff and comp] (Auth: HRS §§28-10.88, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-62 Application for a remote online notary public commission. (a) Only a notary public with an active commission may apply for a remote online notary public commission.

(b) Each applicant for a remote online notary public commission shall complete and file with the attorney general an application for commission of remote online notary public. In addition to the information required under section 5-11-21(b), a completed application shall include:

- (1) A non-refundable application fee;
- (2) The applicant's email address;
- (3) The applicant's notary public commission number;
- (4) A description of the communication technologies and devices that the applicant

intends to use to perform remote online notarization;

- (5) The name, address, and website address of any vendors or other persons that will directly supply to the notary public the technologies and devices that the notary public intends to use;
- (6) A description of the data storage methods to maintain a secure backup of electronic journals and audiovisual recordings;
- (7) A statement certifying that the applicant has obtained a digital certificate from a qualified certificate authority or a trusted service provider to be used by the applicant in performing remote online notarizations; and
- (8) A statement of compliance that the technologies named in the application are fully compliant with chapter 456, HRS, and this chapter.

(c) If, during the term of a remote online notary public's commission, the remote online notary public intends to use the technologies or devices of a vendor or person other than those identified in the application submitted under subsection (b), the remote online notary public shall notify the attorney general identifying such other business or other person as required by this section. [Eff and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-24, 456-25)

§5-11-63 Action on application for remote online notary public commission. (a) Unless otherwise provided by law, the attorney general shall take the following actions within six months after the filing of a complete application for a commission as an online notary public:

- (1) If the attorney general deems appropriate, conduct an investigation of the applicant; and

(2) After completing any necessary investigation, provide written notification to the applicant of the status of the application for a commission. If the application is denied, written notification of the denial shall state the reason for denying the application and shall inform the applicant of the right to a hearing in accordance with chapter 91, HRS, and chapter 5-1.

(b) An application may be considered abandoned if the application is not completed and the required documents and other information are not submitted to the attorney general within ninety days from the date the application is first filed with the attorney general. The attorney general shall not be required to act on any abandoned application and the abandoned application may be destroyed by the attorney general.
 [Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-64 Remote online notary public examination. No remote online notary public commission shall be issued to any notary public unless the notary public pays the examination fee and takes and passes an examination specific to notarization of remotely located individuals as prescribed by the attorney general and pursuant to the requirements of section 5-11-32. [Eff and comp]
 (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-65 Remote online notary public commission. The attorney general shall issue a certificate commissioning a notary public to perform remote online notarization, provided that no remote online notary public commission shall be in effect, nor shall a notary public perform remote online notarization

unless, in addition to the requirements of sections 5-11-62 and 5-11-64, the notary public:

- (1) Files a literal or photostatic copy of the notary public's remote online notary public commission issued by the attorney general with the clerk of the circuit court of the circuit in which the remote online notary public resides within thirty days of the receipt of the commission; and
- (2) Submits to the attorney general a tangible copy of the notary public's electronic seal and electronic signature. [Eff and comp
] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §456-24)

§5-11-66 Term of commission as remote online notary public. A remote online notary public's commission to perform notarial acts for remotely located individuals shall expire on the same date as the notary public's commission. [Eff and comp
] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-1, 456-24)

§5-11-67 Application for renewal of remote online notary public commission. (a) Each remote online notary public shall be responsible for timely renewing the remote online notary public's commission and satisfying the renewal requirements provided by law. A completed renewal application to perform remote online notarial acts received by the attorney general within sixty calendar days prior to the expiration of the notary public's current commission shall be considered timely filed.

(b) At the time of commission renewal as a remote online notary public, each remote online notary public shall submit a completed renewal application, pay all applicable fees, and comply with any other requirement provided by law.

(c) The failure to timely renew a commission as a remote online notary public, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement may cause the commission to be automatically forfeited. [Eff and comp
] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-24, 456-25)

§5-11-68 Means of performing a remote online notarial act.

(a) A remote online notary public located in the State may perform a notarial act for remotely located individuals only if the remotely located individual personally appears before the remote online notary public at the time of the notarization.

(b) A remotely located individual may comply with the requirement to appear personally before a remote online notary public by appearing before the remote online notary public by means of communication technology. [Eff and comp
] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §465-23)

§5-11-69 Identity proofing. (a) If a remote online notary public does not have satisfactory evidence of the identity of a remotely located individual, the remote online notary public shall reasonably verify the remotely located individual's identity through two different types of identity proofing consisting of a multi-factor authentication procedure as provided in this section. The procedure shall analyze the remotely located individual's identity credential against trusted third-person data sources, bind the remotely located individual's identity to the remotely located individual following successful knowledge-based authentication, and permit the remote online notary public visually to compare

the identity credential and the remotely located individual.

(b) The analysis of the identity credential and the knowledge-based authentication shall conform to the following requirements:

- (1) Credential analysis. The analysis of an identity credential shall use public or private data sources to confirm the validity of the identity credential presented by a remotely located individual and shall, at a minimum:
 - (A) Use automated software processes to aid the remote online notary public in verifying the identity of each remotely located individual;
 - (B) Require that the identity credential passes an authenticity test, consistent with sound commercial practices that use appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identity credential is not fraudulent or inappropriately modified;
 - (C) Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identity credential details; and
 - (D) Enable the remote online notary public visually to compare for consistency the information and photograph on the identity credential and the remotely located individual as viewed by the remote online notary public in real time through communication technology; and
- (2) Knowledge-based authentication. A knowledge-based authentication is successful if it meets the following requirements:

- (A) The remotely located individual shall answer a quiz consisting of a minimum of five questions related to the remotely located individual's personal history or identity formulated from public or private data sources;
- (B) Each question shall have a minimum of five possible answer choices;
- (C) At least eighty per cent of the questions shall be answered correctly;
- (D) All questions shall be answered within two minutes;
- (E) If the remotely located individual fails the first attempt, the remotely located individual may retake the quiz one time within twenty-four hours;
- (F) During a retake of the quiz, a minimum of forty per cent of the prior questions shall be replaced;
- (G) If the remotely located individual fails the second attempt, the remotely located individual is not allowed to retry with the same remote online notary public within twenty-four hours of the second failed attempt; and
- (H) The remote online notary public shall not be able to see or record the questions or answers. [Eff and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-20, 456-23)

§5-11-70 Other methods of identity verification.

A remote online notary public has satisfactory evidence of the identity of a remotely located individual if the remote online notary public has personal knowledge, as defined in paragraph (1), of the identity of the remotely located individual or if the remote online notary public has satisfactory evidence of the identity of the remotely located

individual by oath or affirmation of a credible witness, as defined in paragraph (2), appearing before the remote online notary public.

- (1) Personal knowledge. A remote online notary public has personal knowledge of the identity of the remotely located individual appearing before the remote online notary public if the remotely located individual is personally known to the remote online notary public through dealings sufficient to provide reasonable certainty that the remotely located individual has the identity claimed; or
- (2) Credible witness. To be a credible witness, the witness shall have personal knowledge of the remotely located individual who has made a statement in or executed a signature on the record that is the subject of the notarial act. The remote online notary public shall have personal knowledge of the credible witness or shall have verified the identity of the credible witness under section 5-11-69. A credible witness may be a remotely located individual if the remote online notary public, credible witness, and remotely located individual whose statement or signature is the subject of the notarial act can communicate by using communication technology. [Eff and comp]
(Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-20, 456-23)

§5-11-71 Standards for communication technology.

(a) A remote online notary public may not perform a notarial act for a remotely located individual unless the technology identified by the remote online notary public satisfies all of the following:

- (1) Provides continuous synchronous audiovisual feeds;
- (2) Provides sufficient video resolution and

audio clarity to enable the remote online notary public and remotely located individual to see and speak with each other simultaneously through live, real-time transmission;

- (3) Provides sufficient captured-image resolution for identity proofing;
- (4) Provides a means of authentication that reasonably ensures only authorized parties have access to the audiovisual record of the performed notarial act;
- (5) Provides for the recording of the remote online notarial act in compliance with this chapter in sufficient quality to ensure the verification of the remote online notarial act;
- (6) Ensures that any change to or tampering with an electronic record before or after the electronic notary seal has been affixed and the remote online notarial act has been completed is evident;
- (7) Provides confirmation that the electronic record presented is the same electronic record notarized;
- (8) Provides a means of electronically affixing the notary public's notary seal, signature, and certification to the notarized document;
- (9) Provides an electronic-format notary journal that complies with the provisions of chapter 456, HRS, and this chapter to document the remote online notarial acts;
- (10) Provides that if a remotely located individual shall exit the workflow or if the workflow is interrupted for any reason, the remotely located individual shall restart the identity verification process under section 5-11-69 or 5-11-70 from the beginning; and
- (11) Provides security measures the attorney general deems reasonable to prevent unauthorized access to:
 - (A) The live transmission of the

- audiovisual communication;
 - (B) A recording of the audiovisual communication;
 - (C) The verification methods and credentials used in the identity proofing procedure;
 - (D) The electronic records presented for online notarization; and
 - (E) Any personally identifiable information used in the identity proofing.
- (b) The online notary public shall immediately cease performing remote online notarial acts and notify the attorney general if:
- (1) The technology no longer permits the remote online notary public to meet the requirements of chapter 456, HRS, or this chapter;
 - (2) The vendor ceases to provide the technology, which met the requirements of this section;
 - (3) The vendor has failed to protect from unauthorized access any information it is required to protect under chapter 456, HRS, this chapter, or any other laws in Hawaii; or
 - (4) Any other grounds that may materially affect the ability of notaries public to meet the requirements of Hawaii law. [Eff and comp
] (Auth: §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-23, 456-25)

§5-11-72 Electronic signature and electronic notary seal; electronic stamping device; electronic notarial certificate. (a) In addition to the rubber stamp notary seal required for all notaries public pursuant to section 456-3, HRS, and section 5-11-5, a remote online notary public shall obtain and keep an electronic stamping device, on which, when logically associated with an electronic document, shall contain the name of the notary public, the commission number

of the notary public, and the words "notary public" and "State of Hawaii" and utilizes tamper-evident technology.

(b) The remote online notary public shall authenticate all of the notary public's notarial acts, attestations, certifications, and instruments with the notary public's electronic notary seal, using an electronic stamping device, contemporaneously with the performance of the notarial act, as prescribed by chapter 456, HRS.

(c) A remote online notary public shall attach or logically associate the remote online notary public's electronic signature and electronic notary seal to the electronic notarial certificate in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident.

(d) The remote online notary public shall use technology from a third-party provider of the communication technology for an electronic signature, electronic notary seal, and electronic notarial certificate.

(e) The electronic notarial certificate shall comply with sections 456-21 and 456-23, HRS, the form of certificate provided in section 502-41, HRS, if applicable, or the form of certificate provided by other applicable law, and this chapter, and shall indicate that the notarial act was performed using communication technology.

(f) A remote online notary public shall safeguard and maintain sole control of the remote online notary public's electronic notary seal and electronic stamping device by means of use of a password or other secure method of authentication.

(g) Upon resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal, the remote online notary public shall destroy or disable the remote online notary public's electronic stamping device, including but not limited to, any coding, disk, digital certificate, card, software, or password, that enables the notary public to attach the electronic notary seal

to an electronic record. The remote online notary public shall submit a declaration to the attorney general within ninety days of resignation from, or revocation or abandonment of, a commission, or the expiration of a commission without renewal in which the remote online notary public declares that the electronic stamping device was disabled and indicates the date and manner in which the electronic stamping device was disabled. Failure to comply with this section may result in an administrative fine of \$200.
[Eff and comp] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-9, 456-21, 456-23, 456-35, 503-41)

§5-11-73 Retention and repositories of electronic journal and audiovisual recording. (a) In addition to the tangible journal required of all notaries public pursuant to section 456-15, HRS, a remote online notary public shall retain an electronic journal as required under section 456-15, HRS, and this chapter and any audiovisual recording created under section 456-23, HRS, in a computer or other electronic storage device that protects the journal and recording against unauthorized access by password or cryptographic process. The electronic journal and audiovisual recording shall be maintained and retained in an industry-standard audiovisual file format that can be viewed by the attorney general without the need for additional software. An electronic journal kept by the remote online notary public and the audiovisual recording created pursuant to this subchapter are not subject to the requirements of section 5-11-9.

(b) A remote online notary public shall take reasonable steps to ensure that a backup of the electronic journal and audiovisual recording exists and is secure from unauthorized use.

(c) On the death or adjudication of incompetency of a current or former remote online notary public, the remote online notary public's personal representative or guardian, or any other person

knowingly in possession of an electronic journal or audiovisual recording shall comply with the retention requirements of chapter 456, HRS, and this chapter and transmit the journal and recording to:

- (1) One or more repositories under subsection (d); or
- (2) The attorney general in an industry-standard data storage device that is readable without the need for additional software or password or cryptographic process.

(d) A remote online notary public, a guardian or personal representative of a remote online notary public, or any other person knowingly in possession of an electronic journal or audiovisual recording may, by written contract, engage a third person to act as a repository to provide the storage required by this chapter. A third person under a contract pursuant to this subsection shall be deemed a repository under chapter 456, HRS. The contract shall:

- (1) Enable the notary public, the guardian or personal representative, or the person in possession to comply with the retention requirements of chapter 456, HRS, and this chapter, even if the contract is terminated; or
- (2) Provide that the information will be transferred to the attorney general in an industry-standard data storage device that is readable without the need for additional software or password or cryptographic process upon the attorney general's request or if the contract is terminated.(e) At any time, the electronic journal and audiovisual recording shall be subject to reasonable periodic, special, or other audits or inspections by the department as required under section 456-15, HRS.

(f) The remote online notary public shall retain the remote online notary public's electronic journal and audiovisual recording for ten years after the performance of the last notarial act chronicled in the journal. The notary public shall provide to the

attorney general the location of the electronic journal upon resignation from, or revocation or abandonment or suspension of, a commission, or the expiration of a commission without renewal.

(g) The failure to comply with this section may result in an administrative fine of no less than \$50 and no more than \$500." [Eff and comp

] (Auth: HRS §§28-10.8, 456-1.5, 456-8, 456-23) (Imp: HRS §§456-15, 456-23, 456-24)

2. Material, except source notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of chapter 5-11, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on _____ and filed with the Office of the Lieutenant Governor.

CLARE E. CONNORS
Attorney General

APPROVED AS TO FORM:

Deputy Attorney General

IV. Administrative Matters

A. Update on the Board's Upcoming Advocacy Activities and Programs in Accordance with the Board's Powers under Section 201M-5, HRS