§ 135-c. Electronic notarization. 1. Definitions. (a) "Communication technology" means an electronic device or process that: (i) allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and (ii) when necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(b) "Electronic" shall have the same meaning as set forth in subdivision one of section three hundred two of the state technology law.

(c) "Electronic record" means information that is created, generated, sent, communicated, received or stored by electronic means.

(d) "Electronic notarial act" means an official act by a notary public, physically present in the state of New York, on or involving an electronic record and using means authorized by the secretary of state.

(e) "Electronic notary public" or "electronic notary" means a notary public who has registered with the secretary of state the capability of performing electronic notarial acts.

(f) "Electronic signature" shall have the same meaning as set forth in subdivision three of section three hundred two of the state technology law.

(g) "Principal" means an individual:

(i) whose signature is reflected on a record that is notarized;

(ii) who has taken an oath or affirmation administered by a notary public; or

(iii) whose signature is reflected on a record that is notarized after the individual has taken an oath or affirmation administered by a notary public.

(h) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

2. Any notary public qualified under this article is hereby authorized to perform an electronic notarial act by utilizing audio-video communication technology that allows the notary public to interact with a principal, provided that all conditions of this section are met.

(a) The methods for identifying document signers for an electronic

notarization shall be the same as the methods required for a paper-based notarization; provided, however, an electronic notarial act conducted utilizing communication technology shall meet the standards which have been approved through regulation by the secretary of state as acceptable. Such regulations shall include, but not be limited to:

(i) that the signal transmission shall be secure from interception through lawful means by anyone other than the persons communicating;

(ii) that the communication technology shall permit the notary public to communicate with the principal live, in real time;

(iii) that the communication technology shall permit the notary to communicate with and identify the remotely located individual at the time of the notarial act; and

(iv) a standard that requires two or more different processes for authenticating the identity of a remotely located individual utilizing technology to detect and deter fraud, but which may allow a notary public's personal knowledge of a document signer to satisfy such requirement.

(b) If video and audio conference technology has been used to ascertain a document signer's identity, the electronic notary shall keep a copy of the recording of the video and audio conference and a notation of the type of any other identification used. The recording shall be maintained for a period of at least ten years from the date of transaction.

3. Registration requirements. (a) Before performing any electronic notarial act or acts, a notary public shall register the capability to notarize electronically with the secretary of state on a form prescribed by the secretary of state and upon payment of a fee which shall be set by regulation.

(b) In registering the capability to perform electronic notarial acts, the notary public shall provide the following information to the secretary of state, notary processing unit:

(i) the applicant's name as currently commissioned and complete mailing address;

(ii) the expiration date of the notary public's commission and signature of the commissioned notary public;

(iii) the applicant's e-mail address;

(iv) the description of the electronic technology or technologies to be used in attaching the notary public's electronic signature to the electronic record; and

(v) an exemplar of the notary public's electronic signature, which shall contain the notary public's name and any necessary instructions or techniques that allow the notary public's electronic signature to be read.

4. Types of electronic notarial acts. (a) Any notarial act authorized by section one hundred thirty-five of this article may be performed electronically as prescribed by this section if: (i) for execution of any instrument in writing, under applicable law that document may be signed with an electronic signature and the notary public is reasonably able to confirm that such instrument is the same instrument in which the principal made a statement or on which the principal executed a signature; and (ii) the electronic notary public is located within the state of New York at the time of the performance of an electronic notarial act using communication technology, regardless of the location of the document signer. If the principal is outside the United States, the record or subject of the notarial act:

(1) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or

(2) shall involve property located in the territorial jurisdiction of the United States or shall involve a transaction substantially connected with the United States.

(b) An electronic notarial act performed using communication technology pursuant to this section satisfies any requirement of law of this state that a document signer personally appear before, be in the presence of, or be in a single time and place with a notary public at the time of the performance of the notarial act.

5. Form and manner of performing the electronic notarial act. (a) When performing an electronic notarial act relating to execution of instruments in writing, a notary public shall apply an electronic signature, which shall be attached to the electronic record such that removal or alteration of such electronic signature is detectable and

will render evidence of alteration of the document containing the notary signature which may invalidate the electronic notarial act.

(b) The notary public's electronic signature is deemed to be reliable if the standards which have been approved through regulation by the secretary of state have been met. Such regulations shall include, but not be limited to, the requirements that such electronic signature be:

(i) unique to the notary public;

(ii) capable of independent verification;

(iii) retained under the notary public's sole control;

(iv) attached to the electronic record; and

(v) linked to the data in such a manner that any subsequent alterations to the underlying document are detectable and may invalidate the electronic notarial act.

(c) The notary public's electronic signature shall be used only for the purpose of performing electronic notarial acts.

(d) The remote online notarial certificate for an electronic notarial act shall state that the person making the acknowledgement or making the oath appeared through use of communication technology.

(e) The secretary shall adopt rules necessary to establish standards, procedures, practices, forms, and records relating to a notary public's electronic signature. The notary public's electronic signature shall conform to any standards adopted by the secretary.

6. Recording of an electronic record. (a) If otherwise required by law as a condition for recording that a document be an original document, printed on paper or another tangible medium, or be in writing, the requirement is satisfied by paper copy of an electronic record that complies with the requirements of this section.

(b) If otherwise required by law as a condition for recording, that a document be signed, the requirement may be satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not

accompany an electronic signature if the notary has attached an electronic notarial certificate that meets the requirements of this section.

(d) (i) A notary public may certify that a tangible copy of the signature page and document type of an electronic record notarized by such notary public is an accurate copy of such electronic record. Such certification must (1) be dated and signed by the notary public in the same manner as the official signature of the notary public provided to the secretary of state pursuant to section one hundred thirty-one of this article, and (2) comply with section one hundred thirty-seven of this article.

(ii) A county clerk, city registrar, or other recording officer where applicable shall accept for recording a tangible copy of an electronic record and that is otherwise eligible to be recorded under the laws of this state if the record has been certified by a notary public or other individual authorized to perform a notarial act.

(iii) A certification in substantially the following form is sufficient for the purposes of this subdivision:

CERTIFICATE OF AUTHENTICITY

State of New York)
) ss.:
County of .....)

On this ..... day of ..... in the year ....., I certify that the signature page of the attached record (entitled .....) (dated .....) is a true and correct copy of the signatures affixed to an electronic record printed by me or under my supervision. I further certify that, at the time of printing, no security features present on the electronic record indicated any changes or errors in an electronic signature in the electronic record after its creation or execution.

(Signature and title of notary public)

(official stamp or registration number, with the expiration date of the notary public's commission)

7. Change of e-mail address. Within five days after the change of an electronic notary public's e-mail address, the notary public shall electronically transmit to the secretary of state a notice of the change, signed with the notary public's official electronic signature.

8. No notary public or business employing the services of a notary public operating in the state of New York shall exclusively require notarial transactions to utilize electronic notarization.

9. Nothing in this section shall be construed as requiring any notary public to perform a notarial act using electronic communication technology. A notary public may refuse to perform such a notarial act if the notary public is not satisfied that (a) the principal is competent or has the capacity to execute a record, or (b) the principal's signature is knowingly and voluntarily made.

10. Notwithstanding article nine of the real property law or any other law to the contrary, any act performed in conformity with this section shall satisfy any requirements at law that a principal personally appear before, be in the presence of, or be in a single time and place with a notary public at the time of the performance of the notarial act, unless a law expressly excludes the authorization provided for in this section.