

GUIDANCE ON EMERGENCY RULES FOR NOTARIES PUBLIC AND REMOTE NOTARIZATION

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On March 24, 2020, the Office of Professional Regulation, within the Vermont Secretary of State’s Office, issued Emergency Rules for Notaries Public and Remote Notarization (“Rules”). The purpose of these Rules is to facilitate notarial acts taking place when the signer of the record and the notary public cannot physically be in the same space.

The procedures set forth in these Rules should be used sparingly and only when a notary public and the signer of a record cannot be physically present in the same space. These Rules do not authorize any form of electronic notarial acts or remote online notarization.

The following is further guidance from OPR regarding the process for remote notarization allowed under the Rules.

Background

Under current law, if a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature on the record must “personally appear” before the notary public performing the notarial act. A “personal appearance” before a notary public is defined in the law as

- The signer of the document and the notary public being in the same physical space; or
- The signer and the notary public communicating through a secure communication link (the protocols and details of which are to be set through Rule by OPR).

Due to the current COVID-19 emergency, OPR recognizes that this first option for a “personal appearance” is no longer safe or possible for many. Therefore, the Office has issued the Rules to establish the requirements for “personally appearing” before a notary public through communication by a “secure communication link.”

Guidance

1. Clarifications

a. “Secure Communication Link”

- i. The Rules require the remote “personal appearance” to take place through “Secure Communication Link.” The video conference technology used for Remote Notarization must:

1. Allow for direct, real-time interaction between the principal signer(s) and the Notary;
2. Be of such quality that clear visual observation of the face of each participant and clear visual observation of the identification being provided; and
3. Have an audio-visual recording function such that the notary public can record the meeting between the Remotely Located Individual and the notary public.

- a. Please note that no pre-recorded video of the person signing is allowed.

- ii. OPR used the term “Secure Communication Link” because it is the term used in the statute. The term, however, is defined in the Rules as any communication technology that allows the signer and the notary public to see each other simultaneously. There are no other security requirements for the “secure communication link.”

- b. The signer of the records, defined in the Rules as the “Remotely Located Individual”, and the notary public must both be located in Vermont when the Remote Notarial Act is performed. (Rules 2-5 and 4-2)
- c. The signer and the notary public must both physically sign a tangible piece of paper. Electronic signatures are not permissible. The Rules permit the signer to sign the record, and transmit that signed record (by electronic means, such as email, facsimile, or photograph) to the notary public. The notary public must then affix the notarial act certificate and accompanying signature on the record received from the signer.
- d. The final record resulting from the above process (with the copy of the signer’s signature and the original or “wet signature” from the notary public) will be the “original” of the document. This means that, if the authenticity of the document is called into question or reviewed at some future date, this final record will be

accorded the “self-authenticating” status of an “original” version of a record, as that term is defined in the Vermont Rules of Evidence.

- i. This provision is included in the Rules for legal purposes and future consideration. Notaries public and signers need not be overly concerned about the use of the term “original”, though both parties should remain aware that the final record, with the copy of the signer’s signature and the wet signature of the notary public, is considered the “original” of the document under law.
2. Process: Below is the process that OPR envisions taking place. If a deviation from these procedures is required, notaries public should consult the Rules to determine whether such a change is permitted.
 - a. The individual who is making the statement and/or executing the document (the “Remotely Located Individual”) and the notary public will engage over a Secure Communication Link. The notary public, or someone designated by the notary public, will begin recording the communication.
 - b. The Remotely Located Individual will either
 - i. Send a copy of the document to be signed to the notary public prior to meeting with the notary public for the performance of the Remote Notarial Act, OR
 - ii. The Remotely Located Individual will hold up each page of the document to the video recording device such that the notary public is able to later confirm that the signed document received electronically from the Remotely Located Individual is the same as the one the notary public witnessed being signed over the Secure Communication Link.
 - c. The notary public will confirm, visually and through audio, the identification of the Remotely Located Individual. This means that one of the following will be true:
 - i. The notary public has personal knowledge of the Remotely Located Individual (i.e., the Remotely Located Individual is personally known to the notary public through dealings sufficient to provide reasonable certainty that the Signer has the identity claimed); OR

- ii. The notary public has satisfactory evidence of the identity of the Remotely Located Individual through verification, on oath or affirmation, from a credible witness appearing before the notary public; OR

Note: The credible witness may appear to the notary public through the same Secure Communication Link, either co-located with the Remotely Located Individual or on a third-line that is simultaneously participating in the communication between the Remotely Located Individual and the notary public.

- iii. The Remotely Located Individual will hold up to the video recording device two forms of identification long enough for the notary public to confirm that the forms of identity meet the requirements in statute and that they provide satisfactory evidence of the Remotely Located Individual's identity.

Note: The two forms of identification must include:

1. At least one of the following that is current or expired within the past three (3) years:
 - a. a passport
 - b. a driver's license
 - c. a government-issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act; or
 - d. another form of government identification issued to an individual, which contains the signature or a photograph of the individual, and is satisfactory to the notary public.

2. If a second form of identification that meets the requirements set forth in subsection (a) is not available, a second form of identification credential that assures the notary public of the identity of the Remotely Located Individual. This could include tax forms, utility bills, or vital records.

- d. Each Remotely Located Individual and the notary public must indicate that they are physically located in the state of Vermont.
- e. The meeting will end. The notary public shall maintain the audio-visual recording of the meeting for at least seven years.

- f. The Remotely Located Individual shall transmit by hand, email, fax, or other electronic means a legible copy of the signed document directly to the notary public on the same date the document was signed.
- g. The notary public will confirm that the document received from the Remotely Located Individual is the same document the notary public witnessed the Remotely Located Individual sign over the Secure Communication Link.
- h. The notary public, using the certificate language set out below, shall perform the notarial act on the copy of the document received from the Remotely Located Individual.
 - i. If the wet-signed, paper document that the Remotely Located Individual signed over the Secure Communication Link is mailed or delivered to the notary public within 30 days of performing the Remote Notarial Act, the notary public may perform the notarial act on this wet-signed, paper document instead of on the electronically transmitted document.
- i. Then, on the same day, the notary public shall transmit the final notarized document (now the “Original” for future purposes) back to the Remotely Located Individual.

3. Certificates

- a. Each certificate that the notary public affixes to a document on which a Remote Notarial Act is performed shall include the following information:
 - i. the signature of the notary public executed in the same manner as on file with OPR;
 - ii. the legibly printed name of the notary public;
 - iii. the commission number of the notary public;
 - iv. the date of expiration of the notary public’s commission;
 - v. the title of the notary public, which shall be “Notary Public”;
 - vi. the date the document is signed by the notary public;
 - vii. the date the document is signed by the Signer;

- viii. the jurisdiction, including the county and state, in which the notarial act is performed; and
 - ix. a statement that the notarial act was performed remotely.
- b. Sample certificates can be found in the Rules in part 4-4.
- c. A certificate must be part of or securely attached to the document on which the Remote Notarial Act is performed.
 - i. “Part of” the document means the certificate is written on the document.
 - ii. “Securely attached” to the document means the certificate is attached by staple, glue, or other permanent means, to the electronic version of the document that has been signed by the Remotely Located Individual.
- d. Certificates shall be legibly handwritten, stamped, embossed, or any combination of these means, on the document.