

## Emergency Filing - Coversheet

### **Instructions:**

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” ([CVR 04-000-001](#)) adopted by the Office of the Secretary of State, this emergency filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, the Legislative Committee on Administrative Rules and a copy with the Chair of the Interagency Committee on Administrative Rules.

All forms shall be submitted to the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

This emergency rule may remain in effect for a total of 180 days from the date it first takes effect.

**Certification Statement:** As the adopting Authority of this rule (see 3 V.S.A. § 801(b)(11) for a definition), I believe there exists an imminent peril to public health, safety or welfare, requiring the adoption of this emergency rule.

The nature of the peril is as follows (*PLEASE USE ADDITIONAL SHEETS IF SPACE IS INSUFFICIENT*). If these Emergency Rules expire before rules are adopted to implement Act 171, Vermont notaries public will no longer be permitted to perform remote notarial acts, thus hampering the performance of crucial transactions.

I approve the contents of this filing entitled:

Emergency Administrative Rules for Notaries Public and Remote Notarization

\_\_\_\_\_/s/ James C. Condos\_\_\_\_\_, on \_\_\_\_\_

(signature)

(date)

Printed Name and Title:

RECEIVED BY: \_\_\_\_\_

- Coversheet
- Adopting Page
- Economic Impact Analysis
- Environmental Impact Analysis
- Strategy for Maximizing Public Input
- Scientific Information Statement (if applicable)
- Incorporated by Reference Statement (if applicable)
- Clean text of the rule (Amended text without annotation)
- Annotated text (Clearly marking changes from previous rule)

James C. Condos, Secretary of State

1. TITLE OF RULE FILING:

Emergency Administrative Rules for Notaries Public and Remote Notarization

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. PRIMARY CONTACT PERSON:

*(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).*

Name: Lauren K. Layman

Agency: Office of Professional Regulation

Mailing Address: 89 Main Street, 3rd Floor, Montpelier, VT  
05620-3602

Telephone: 802 828 - 2883 Fax: -

E-Mail: lauren.layman@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://sos.vermont.gov/notaries-public/statutes-rules-resources/>

4. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).*

Name: Kelsi Alger

Agency: Office of Professional Regulation

Mailing Address: 89 Main Street; 3<sup>rd</sup> Floor; Montpelier, VT  
05620-3602

Telephone: 802 828 - 1505 Fax: -

E-Mail: chris.winters@vermont.gov

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE EXEMPTING IT FROM INSPECTION AND COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).*

3 V.S.A. § 801(b) (11) [SOS is the adopting authority for OPR]

26 V.S.A. § 5323 [OPR notary public rulemaking authority]

7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

The above statute allows the Secretary of State's Office of Professional Regulation to adopt administrative rules related to remote notarization through a secure communication link.

8. CONCISE SUMMARY (150 WORDS OR LESS):

These Emergency Rules define the "personal appearance" requirement for remote notarial acts conducted through a secure audio-visual communication link.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

The Office of Professional Regulation (OPR) seeks the renewal of the Emergency Administrative Rules for Notaries Public and Remote Notarization to allow Vermont notaries public to continue to perform remote notarial acts while OPR adopts rules to implement Act 171 (2022). The Emergency Rules were first adopted in March 2020 in an effort to facilitate the performance of essential transactions requiring notarial acts when individuals and notaries public were unable to safely share a physical space.

Since this time, remote notarial acts have become a valued tool for the performance of essential transactions, from real estate transactions and wills to health care documents and adoptions. Recognizing this, the Vermont General Assembly adopted Act 171 in May 2022, which permits Vermont notaries public to perform notarial acts for remotely located individuals and electronically.

Though Act 171 will eventually replace the need for the Emergency Rules, OPR must first adopt rules to implement Act 171. OPR needs additional time to adopt

rules for the issuance of the specialty licenses required under Act 171, and the establishment of technology standards, record retention requirements, and methods for the performance of remote and electronic notarial acts.

The Emergency Rules expire on September 10, 2022. To avoid the suspension of remote notarial acts and the disruption of essential transactions, OPR seeks to renew the Emergency Rules for an additional 180 days during the Act 171 rulemaking process.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY AS DEFINED IN 3 V.S.A. § 801(b)(13)(A):

The Rules are not arbitrary, as that term is defined in 8 V.S.A. § 801(b)(13)(A), because there is a factual basis for the decision to permit remote notarial acts and to continue to authorize the same, the Emergency Rules are rationally connected to this factual basis, and the decision herein would make sense to the reasonable person. The Emergency Rules were initially the result of COVID-19 and the inability for people to meet in person to conduct transactions. Since the initial adoption of the Emergency Rules, the General Assembly has adopted a law, Act 171, permitting Vermont notaries public to perform electronic and remote notarial acts, subject to the adoption of rules by OPR. OPR needs additional time to adopt the rules implementing Act 171. Should the Emergency Rules not be renewed, remote notarial acts will not be permitted until OPR has concluded the rulemaking process for Act 171 rules. The Emergency Rules are rationally connected to addressing the problem of COVID-19 preventing in-person transactions because the Emergency Rules facilitate the performance of essential transactions by allowing notarial acts to be performed remotely using audio-visual communication technology. Renewal of the Emergency Rules is rationally connected to continuing to facilitate remote notarial acts while OPR adopts rules implementing the will of the General Assembly as reflected in Act 171. Finally, the Emergency Rules would make sense to a reasonable person because the

Emergency Rules (a) are narrowly tailored to address the problem created by the pandemic, and (b) allow commercial and legal transactions to continue in the manner they occur in non-pandemic times and while OPR adopts rules to implement Act 171. In turn, the Emergency Rules are not arbitrary as that term is defined in Vermont's statutes.

**11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:**

State agencies, the judiciary, Town Clerks, social service agencies, hospitals, nursing homes and other health care facilities, notaries public, real estate professionals, banks, mortgage companies, attorneys (including those in elder care, estate planning, and real estate), and the public

**12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):**

These Emergency Rules have allowed notarial acts to continue in the face of a public health crisis and have facilitated the continuance of essential transactions and commerce. Adopting these Emergency Rules again will continue to facilitate and protect our economy and the public health while OPR adopts rules implementing Act 171.

**13. A HEARING IS NOT SCHEDULED .**

**14. HEARING INFORMATION**

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date:

Time: AM

Street Address:

Zip Code:

Date:

Time: AM

Street Address:

Zip Code:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):

16. EMERGENCY RULE EFFECTIVE: 09/11/2022

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

*(A DATE NO LATER THAN 180 DAYS FOLLOWING ADOPTION OF THIS EMERGENCY RULE):*

03/09/2023

18. NOTICE OF THIS EMERGENCY RULE SHOULD NOT BE PUBLISHED IN THE WEEKLY NOTICES OF RULEMAKING IN THE NEWSPAPERS OF RECORD.

19. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Notary Public

Notary

Remote Notarization

Professional Regulation

Personal Appearance