



State of Vermont
Office of the Secretary of State

Sarah Copeland Hanzas, Secretary of State
S. Lauren Hibbert, Deputy Secretary

Office of Professional Regulation
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March 3, 2023

Sen. Ruth Hardy, Chair
Senate Committee on
Government Operations
c/o Olivia Parker, Committee Assistant
Vermont State House
Montpelier, Vermont 05602

Rep. Michael McCarthy, Chair
House Committee on
Government Operations and Military Affairs
c/o Andrea Hussey, Committee Assistant
Vermont State House
Montpelier, Vermont 05602

Re: Proposed Renewal of the Emergency Administrative Rules for Notaries Public and Remote Notarization

Dear Chair Hardy, Chair McCarthy, and Members:

I am writing to confirm with the Committee that OPR's plan to seek an extension of the emergency rules related to the performance of remote notarial acts conforms with this Committee's legislative intent. The Emergency Administrative Rules for Notaries Public and Remote Notarization ("Emergency Rules") are due to expire on March 9, 2023. Facing this impending expiration date of the Emergency Rules and recognizing the importance of the rules to Vermonters, OPR would like to ask the Legislative Committee on Administrative Rules ("LCAR") to renew the Emergency Rules for an additional 180 days.

These Emergency Rules were first adopted at the beginning of the COVID-19 state of emergency in March 2020 to facilitate the continued performance of essential transactions requiring notarial acts (e.g., real estate sales, wills, health care documents, adoptions) when individuals and notaries public were unable to safely share a physical space. To address the ongoing need for remote notarial acts during the COVID-19 state of emergency and while the General Assembly considered permanent statutory changes permitting remote notarial acts, OPR has sought and LCAR has approved renewal of the Emergency Rules five times. (Per 3 V.S.A. § 844, emergency rules expire after 180 days.)

Since the initial adoption of the Emergency Rules, remote notarial acts have become a valued tool for Vermonters. Reflecting a recognition of the importance of allowing remote notarial acts, the Vermont General Assembly adopted Act 171 in May 2022, permitting, subject to rulemaking, Vermont notaries public to perform notarial acts for remotely located individuals and on electronic records. Before Act 171 replaces the Emergency Rules, however, OPR must first adopt permanent rules implementing Act 171. If the Emergency Rules expire without these permanent rules in

place, Vermonters will not be able to perform remote notarial acts until the new permanent rules are adopted.

Despite anticipating that we would be able to do adopt the permanent rules implementing Act 171 by the time the Emergency Rules expire on March 9, 2023, OPR was not able to do so. Our Office has undergone a significant transition over the past five months which has resulted in changes in OPR staff and stretched resources. Our Director has been deservedly promoted to Deputy Secretary of State, our previous General Counsel left the office and I assumed the role, and both of our staff attorney positions supporting the General Counsel have been vacant. In turn, OPR needs additional time to adopt permanent rules for the issuance of the specialty licenses required under Act 171, as well as for the establishment of technology standards, record retention requirements, and methods for the performance of remote and electronic notarial acts.

To avoid the suspension of remote notarial acts and the disruption of essential transactions, OPR would like to ask the LCAR to extend these Emergency Rules for an additional 180 days. Given that the General Assembly, with the support of this Committee, adopted Act 171 last session, OPR believes that extending the Emergency Rules while the Act 171 rulemaking process takes place would be consistent with this Committee's and the General Assembly's intent, as reflected in Act 171. However, OPR would like to confirm that this interpretation of the Committee's intent is accurate.

I am happy to discuss this matter more with the Committee or to answer any questions you may have. Thank you for taking the time to consider the proposal.

Sincerely,

A handwritten signature in cursive script that reads "Lauren K. Layman".

Lauren K. Layman, General Counsel
Vermont Office of Professional Regulation