

Administrative Procedures – Emergency Rule Filing

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 requiring a signature shall be original signatures of the appropriate adopting authority or authorized person, and all filings are to be submitted at 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*). The public health crisis due to coronavirus global pandemic makes it dangerous to have people physically close together for for notarial acts.

I approve the contents of this filing entitled:

Administrative Rules for Notaries Public and Remote Notarization

, on 03/24/2020
(signature) (date)

Printed Name and Title:

James C. Condos

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)

1. TITLE OF RULE FILING:

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 Layman

Agency: Office of Professional Regulation

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

Telephone: 802 828 - 2883 Fax: 802 828 - 2465

E-Mail: lauren.layman@vermont.gov

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

<https://www.sos.vermont.gov/notaries-public/>

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: Chris Winters

Agency: Secretary of State's Office

Mailing Address: 128 State Street, Montpelier, VT 05633-
1101

Telephone: 802 828 - 2124 Fax: 802 828 - 2465

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).

26 V.S.A. § 5364

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.

8. CONCISE SUMMARY (150 WORDS OR LESS):

These emergency rules further define the "personal appearance" requirement for notarial acts to allow for it to happen by remote means through a secure audio-visual communication link.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

Currently, notarial acts require the notary and signer to be in the same physical location. Due to the COVID-19 health crisis and the need to practice social distancing and to avoid unnecessary close-proximity contacts, especially with vulnerable populations, it is imperative that this rule be immediately implemented to allow the personal appearance requirement to be by audio-video communication, subject to certain standards and requirements. This would allow trusts, estates, powers of attorney for health care, and real estate transactions, for example, to continue during these unprecedented times while still protecting the public health. The rule must still protect the integrity of these transactions by setting clear and reliable standards for remote appearances and notarial acts.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The rule is specifically targeted at the personal appearance definition as defined in statute and is designed to allow for remote notarization to avoid the physical presence requirement which currently endanger public health, particularly with vulnerable populations.

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

Emergency Rule Coversheet

Department of Health, Judiciary, Town Clerks, social service agencies, hospitals, nursing homes, and other health care facilities, real estate professionals, banks, mortgage companies, and attorneys, including those in elder care, estate planning, and real estate.

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

These emergency rules are intended to allow notarial services to continue in the face of a health crisis and will hopefully allow some transactions and commerce to continue despite a significant downturn in most business.

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: 03/24/2020

17. EMERGENCY RULE WILL REMAIN IN EFFECT UNTIL

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

09/21/2020

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

Administrative Procedures – Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. **TITLE OF RULE FILING:**

Administrative Rules for Notaries Public and Remote
Notarization

2. **ADOPTING AGENCY:**

Secretary of State, Office of Professional Regulation

3. **TYPE OF FILING** (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment as long as the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **A NEW RULE** .

4. **LAST ADOPTED** (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):

Administrative Procedures – Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

Administrative Rules for Notaries Public and Remote Notarization

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. CATEGORY OF AFFECTED PARTIES:

LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

State agencies, courts, social service agencies, health care facilities, elder Vermonters, Vermonters sheltering in place, Department of Health, Town Clerks, real estate professionals, banks, mortgage companies, and attorneys, including those in elder care, estate planning, and real estate.

Affected parties are expected to benefit from the ability to continue important transactions and legal

affairs while not exposing themselves to public health threats during this global pandemic.

4. **IMPACT ON SCHOOLS:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

None - other than the general health and safety of Vermonters.

5. **ALTERNATIVES: CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.**

Alternatives not applicable with respect to schools.

6. **IMPACT ON SMALL BUSINESSES:**

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

These rules may improve flexibility for small / solo practitioner attorneys or notaries and allow them to perform services with less travel for themselves or their clients and without the fear of passing or contracting the coronavirus.

7. **SMALL BUSINESS COMPLIANCE: EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.**

Businesses can take advantage of existing technologies to perform remote notarizations and use the new rule to keep important legal transactions moving even under the public health threat and the physical distancing required.

8. **COMPARISON:**

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

These rules represent the least burdensome approaches the agency has been able to identify for effectuating legislative intent to allow limited remote notarization in the face of this health crisis. Having no rule would inflict significant economic damage.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ECONOMIC IMPACT ANALYSIS.*

This economic analysis is sufficient under the circumstances and can only have a positive economic impact as it gives more flexibility to those affected.

Administrative Procedures – Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Administrative Rules for Notaries Public and Remote
Notarization

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation
Secretary of State, Office of Professional Regulation

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

Not applicable.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

Not applicable.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

Not applicable.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACT RECREATION IN THE STATE:*

Not applicable.

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

Not applicable.

Environmental Impact Analysis

8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S*

ENVIRONMENT:

Not applicable.

9. SUFFICIENCY: *EXPLAIN THE SUFFICIENCY OF THIS ENVIRONMENTAL IMPACT ANALYSIS.*

Sufficient, given that there are no environmental impacts.

Administrative Procedures – Public Input

Instructions:

In completing the public input statement, an agency describes the strategy prescribed by ICAR to maximize public input, what it did do, or will do to comply with that plan to maximize the involvement of the public in the development of the rule.

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

Administrative Rules for Notaries Public and Remote
Notarization

2. ADOPTING AGENCY:

Secretary of State, Office of Professional Regulation

3. PLEASE DESCRIBE THE STRATEGY PRESCRIBED BY ICAR TO
MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE
PROPOSED RULE:

Not applicable.

4. PLEASE LIST THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO
COMPLY WITH THAT STRATEGY:

Not applicable.

5. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND
ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE
DEVELOPMENT OF THE PROPOSED RULE:

Although these emergency rules have been developed with uncommon speed, their development has been a model of teamwork under pressing circumstances and in the face of a global pandemic. Urgent email and telephone discussions have happened quickly and frequently over the last week, with as much transparency and inclusiveness as possible through conversations with the Vermont Bar Association, multiple legislators, the Judiciary, the Vermont Bankers' Association, and attorneys representing several areas of legal practice.

Emergency Administrative Rules for Notaries Public and Remote Notarization

Part 1: Scope

If a notarial act relates to a statement made in or a signature executed on a record, 26 V.S.A. § 5364 requires the individual making the statement or executing the signature to appear personally before the notary public performing the notarial act.

Pursuant to these rules, the requirement for a personal appearance is satisfied if the notary public and the person executing the signature are in the same physical place or communicating through a secure communication link using the protocols and standards prescribed in this rule.

These rules do not permit electronic notarization or remote online notarization of electronic documents.

All other provisions of the Vermont Uniform Act on Notarial Acts, as set forth in 26 V.S.A. Chapter 103, continue to apply.

Part 2: Definitions and Clarification of Terms

The definitions in 26 V.S.A. Chapter 103, Notaries Public, are incorporated into these rules. As used in these Rules, the following terms have the following meanings:

- 2-1 “Act” means the Vermont Uniform Law on Notarial Acts, 26 V.S.A. Chapter 103.
- 2-2 “Director” means the Director of the Vermont Office of Professional Regulation.
- 2-3 “Office” means the Vermont Office of Professional Regulation.
- 2-4 “Remote Notarial Acts” means a notarial act performed at the request of a remotely located individual by means of a secure communications link with respect to a tangible record that a notary public may perform under the law of this State. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, attesting a signature, and noting a protest of a negotiable instrument.

- 2-5 "Remotely Located Individual" means an individual or individuals located in Vermont who is/are not in the physical presence of the notary public who perform(s) a notarial act.
- 2-6 "Secure Communication Link" means a communication technology, whether an electronic device or process, that allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and when necessary, facilitates communication with a remotely located individual who has a vision, hearing or speech impairment.
- 2-7 "Signer" means the individual making the statement or executing the signature for which the notary public must perform the notarial act.

Part 3: Administration

- 3-1 **Applicable Law.** Notaries public are regulated by the State of Vermont pursuant to 26 V.S.A. Chapter 103. These emergency rules are issued to clarify requirements for personal appearance before a notary, as set forth in 26 V.S.A. § 5364. This emergency rule is issued in accordance with 3 V.S.A § 844. Copies of these and other statutes are available online at www.legislature.vermont.gov/statutes. The Director regulates notaries public in conformity with these and other Vermont laws, to include the Administrative Procedures Act, 3 V.S.A. § 800 *et seq.*; the Public Records Act, 1 V.S.A. § 315 *et seq.*; and the Laws of Professional Regulation, 3 V.S.A. § 121 *et seq.*
- 3-2 **Resources for Applicants and Registrants.** The Office maintains a website at <https://sos.vermont.gov/opr/> with information and links relevant to all licensed professionals. Information specific to notaries public, including links to forms and online applications, is available from <https://sos.vermont.gov/notaries-public/>.

Part 4: Remote Notarial Acts

- 4-1 Remote Notarial Acts performed in accordance with these rules fulfill the personal appearance requirements set forth in 26 V.S.A. Chapter 103.
- 4-2 Notaries public holding a commission to perform notarial acts in Vermont may perform a Remote Notarial Act while physically located in Vermont and only under the following conditions:

- 4-2-1 The notarial officer: has personal knowledge of the identity of the individual; has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notarial officer; or has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identification.
- 4-2-2 The notarial officer is able reasonably to confirm that a record before the notarial officer is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;
- 4-2-3 The notarial act is performed on a tangible record submitted to the notary public in its original paper format by the remotely located individual; or transmitted electronically to the notary public by the remotely located individual and printed by the notary public prior to the notarial act being evidenced by a certificate.
- 4-2-4 The document presented to or signed before the notary public meets the definition of "original" in the Vermont Rules of Evidence.
- 4-2-5 The notarial officer, or a person acting on behalf of the notarial officer, creates an audio-visual recording of the performance of the notarial act, to be retained for at least 7 years;
- 4-2-6 The Remote Notarial Act complies with all other requirements for notarial acts set forth in the Act.
- 4-2-7 The executed document including the notarial act contains the certificate language set forth in these Rules.
- 4-3 Certificate – Remote Notarial Acts shall be evidenced by a certificate, which shall be hand-written, imprinted by a stamp or embosser, or both, containing the following information:
 - 4-3-1 the signature of the notary public executed in the same manner as on file with the Office;
 - 4-3-2 the legibly printed name of the notary public;
 - 4-3-3 the commission number of the notary public;
 - 4-3-4 the date of expiration of the notary public's commission;

- 4-3-5 the title of the notary public, which shall be "Notary Public";
- 4-3-6 the date the document is signed by the notary public;
- 4-3-7 the date the document is signed by the Signer;
- 4-3-8 the jurisdiction, including the county and state, in which the notarial act is performed;
- 4-3-9 a statement that the notarial act was performed remotely.

4-4 The following sample certificates shall be sufficient for the purposes of performing a Remote Notarial Act:

4-4-1 For an acknowledgement

State of Vermont, County of _____

This record was remotely acknowledged before me through a secure communication link on ____ [date] ____ by ____ [Name of Signer] ____
Executed by ____ [Name of Signer] ____ on ____ [date Signer signed] ____.
Signature of notary public _____
Printed name of notary public _____
Commission number _____
Commission expiration date _____
Title of office is Notary Public

4-4-2 For an acknowledgement in a representative capacity

State of Vermont, County of _____

This record was remotely acknowledged before me through a secure communication link on ____ [date] ____ by ____ [Name of Signer] ____ as the
____ [type of authority, such as officer, trustee, power of attorney] ____ of ____ [name of party on behalf of whom the document was executed] ____.
Executed by ____ [Name of Signer] ____ on ____ [date Signer signed] ____.
Signature of notary public _____
Printed name of notary public _____
Commission number _____
Commission expiration date _____
Title of office is Notary Public

4-4-3 For verification of an oath or affirmation

State of Vermont, County of _____

Sign or sworn remotely before me through a secure communication link on
____ [date] ____ by ____ [Name of Signer] _____

Executed by ____ [Name of Signer] _____ on ____ [date Signer signed] .

Signature of notary public _____

Printed name of notary public _____

Commission number _____

Commission expiration date _____

Title of office is Notary Public

4-4-4 For attesting a signature

State of Vermont, County of _____

Signed or attested remotely before me through a secure communication link on

____ [date] ____ by ____ [Name of Signer] _____

Executed by ____ [Name of Signer] _____ on ____ [date Signer signed] .

Signature of notary public _____

Printed name of notary public _____

Commission number _____

Commission expiration date _____

Title of office is Notary Public

Part 5: Effective Dates; Expiration

These Emergency Rules shall take effect when filed with the Secretary of State in accordance with the Administrative Procedures Act, 3 V.S.A. § 800 *et seq* and shall remain in effect for 180 days thereafter.