

Emergency Rules for Remote and Electronic Notarial Acts

Part 1: Scope

1-1 Personal Appearance.

- a. If a notarial act relates to a statement made in or a signature executed on a record, 26 V.S.A. § 5364(a) requires the individual making the statement or executing the signature to appear personally before the notary public performing the notarial act.
- b. 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 the person, if remotely located, is using communication technology, as defined in 26 V.S.A. § 5304(4), to appear before the notary public using the protocols and standards prescribed in this rule.

1-2 Temporary Waiver of Statute.

- a. The requirement in 26 V.S.A. § 5379(a) for a remotely located individual to appear before a notary public with a special endorsement from the Office to perform a notarial act for a remotely located individual is waived until the expiration of these emergency rules.
- b. The requirements in 26 V.S.A. §§ 5341(d) and (e) and 26 V.S.A. § 5379(b) that a notary public shall obtain a special endorsement from the Office to perform a notarial act for a remotely located individual is waived until the expiration of these emergency rules.
- c. These rules do not waive the requirement that a notary public hold a special endorsement to perform notarial acts on electronic records. The performance of notarial acts on an electronic record is prohibited unless the notary public holds a special endorsement issued by the Office in accordance with these Emergency Rules.
- d. All other provisions of the Vermont Uniform Act on Notarial Acts, as set forth in 26 V.S.A. Chapter 103 apply.

Part 2: Definitions

The definitions in 26 V.S.A. Chapter 103, Notaries Public, are incorporated into these rules.

“Act” means the Vermont Uniform Law on Notarial Acts, 26 V.S.A. Chapter 103.

“Communication technology” means an electronic device or process operating in accordance with 26 V.S.A. § 5380 and in compliance with Part 5 of these Rules.

“Digital Certificate” means the digital certificate obtained from a third party that verifies the identity of the notary public and, after being applied to an electronic record, makes any changes to the electronic record tamper-evident.

“Director” means the Director of the Vermont Office of Professional Regulation.

“Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

“Electronic notarial act” means a notarial act by a notary public, physically present in the state of Vermont, on or involving an electronic record.

“Electronic notarial certificate” means the portion of a notarized electronic record that is completed by a notary public evidencing the notarial act and that includes the information required under 26 V.S.A. §§ 5367 and 5379.

“Electronic signature” means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record.

“Electronic record” means information that is stored in an electronic form and is retrievable in perceivable form.

“Notarial Certificate” means the writing that evidences the completion of a notarial act and contains the information required in 26 V.S.A. §§ 5367 and 5380.

“Notary public” means a person holding a current notary public commission issued by the Office authorizing the performance of a notarial act.

“Office” means the Vermont Office of Professional Regulation.

“Remotely Located Individual” means an individual or individuals located in Vermont who are not in the physical presence of the notary public who perform(s) a notarial act.

“Remote Notarial Acts” means a notarial act performed at the request of a remotely located individual using communication technology, as defined in 26 V.S.A. § 5304(4), with respect to a tangible or electronic 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.

“Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.

“Signer” means the individual making the statement or executing the signature for which the notary public must perform the notarial act.

“Tamper-evident” means that any change to an electronic record after the performance of the notarial act is detectable.

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 on the Office’s website. 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 with information and links relevant to all licensed professionals. Information specific to notaries public, including links to forms and online applications, is available.

Part 4: Remote Notarial Acts

4-1 Personal Appearance. Remote Notarial Acts performed in accordance with these rules fulfill the personal appearance requirements set forth in 26 V.S.A. § 5364.

4-2 Performance of Remote Notarial Acts. Notaries public holding a commission in Vermont may perform a Remote Notarial Act only while physically located in Vermont and only if

- (a) The notary public:
 - a. has personal knowledge of the identity of the individual;
 - b. 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
 - c. has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identification.
- (b) The notary public is able reasonably to confirm that the tangible or electronic record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;
- (c) The notarial act is performed
 - a. on a tangible record submitted to the notary public in its original paper format by the remotely located individual;
 - b. on a record 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; or
 - c. on an electronic record in accordance with Part 6 of these rules.
- (d) The document presented to or signed before the notary public meets the definition of “original” in the Vermont Rules of Evidence.

- (e) The notary public or their designee creates an audio-visual recording of the performance of the notarial act, to be retained for at least 7 years;
- (f) The Remote Notarial Act complies with all other requirements for notarial acts set forth in the Act and these rules.
- (g) A notarial certificate or an electronic notarial certificate is affixed to or logically associated with the tangible or electronic record, and includes the certificate language required under 26 V.S.A. §§ 5367 and 5380 and these Rules.

4-3 Notarial Certificates and Electronic Notarial Certificates. Remote Notarial Acts shall be evidenced by a notarial certificate or an electronic notarial certificate. The notarial certificate and electronic notarial certificates shall

- (a) contain the information required under 26 V.S.A. §§ 5367 and 5380 and these Rules;
- (b) a statement that the notarial act was performed remotely; and
- (c) a statement that the notarial act involved the use of communication technology.

Part 5. Electronic Notary Special Endorsement

5-1 Endorsement required. A notary public must obtain an electronic notary special endorsement in order to perform notarial acts on electronic records, whether in the presence of the individual or for a remotely located individual.

5-2 Eligibility. To be eligible for the electronic-records special endorsement, a notary public shall:

- (a) hold a current notary public commission in good standing;
- (b) attest to selecting and using communication and tamper-evident technology that complies with requirements herein; and
- (c) pay all required application fees.

5-3 Renewal. A notary public shall renew the electronic notary special endorsement commission every two years at the same time the notary public renews their notary public commission.

Part 6. Performing Notarial Acts on Electronic Records

6-1 Performance of Notarial Acts on Electronic Records

- (a) A notary public performing a notarial act on an electronic record shall be physically located in the State of Vermont at the time the notarial act is performed.
- (b) **Tamper-Evident Technology.** A notary public shall select one or more tamper-evident technologies that conform with the requirements of Part 6-2, herein, to perform electronic notarial acts.
- (c) **Personal Appearance.**
 - a. A notary public holding an electronic notary special endorsement may perform authorized notarial acts relating to electronic records only if the individual personally appears before the notary public at the time of the notarial act in accordance with 26 V.S.A. § 5364 or, if performing a notarial act for a remotely located individual, in accordance with Part 4 of these Rules.
- (d) **Identification of Individual.**
 - a. A notary public authorized to perform notarial acts on an electronic record shall verify the identity of the individual prior to performing a notarial act in accordance with 26 V.S.A. § 5365 and, if performing the notarial act for a remotely located individual, in accordance with Part 4, herein.
 - b. A notary public shall not base identification of an individual solely on familiarity with an individual's signature or an electronic verification process that authenticates the individual's electronic signature.
- (e) **Electronic Notarial Certificate.** The notarial act shall be evidenced by an electronic notarial certificate which
 - a. Shall be affixed to or logically associated with the electronic record; and

b. Shall contain the information required under 26 V.S.A. §§ 5367 and 5380.

(f) Electronic Signature.

a. A notary public performing a notarial act on an electronic record shall affix to or logically associate with the electronic notarial certificate the notary public's electronic signature and electronic official stamp, if using, by use of a digital certificate.

6-2 Tamper-Evident Technology.

(a) A notary public shall select one or more tamper-evident technologies to perform notarial acts on electronic records. A person may not require a notary public to use a technology that the notarial officer has not selected.

(b) The tamper-evident technology must be capable of

a. Affixing or attaching the notary public's electronic signature to the electronic record in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident; and

b. Utilizing a valid digital certificate issued by a third-party provider. A notary public shall not perform a notarial act with respect to an electronic record if the digital certificate:

i. has expired;

ii. has been revoked or terminated by the issuing or registering authority;

iii. is invalid; or

iv. is incapable of authentication.

6-3 Reliability and Confidentiality.

(a) A notary public authorized to perform electronic notarial acts shall use the same electronic signature and electronic official stamp, if using, for all electronic notarial acts.

- a. The notary public shall submit to the Office a copy of the notary public's electronic signature and electronic official stamp, if using.
 - b. The notary public's electronic signature and electronic official stamp, if using, shall be unique to the notary public.
- (b) A notary public's electronic signature and electronic official stamp, if using, shall be retained under the notary public's sole control and access. A notary public shall not allow any other individual to use the notary public's electronic signature or electronic official stamp, if using.
- a. A notary public's employer must not permit the use of a notary public's electronic signature or electronic official stamp, if using, by anyone except the notary public.
- (c) A notary public shall not disclose any access information used to affix the notary public's electronic signature or the electronic image of the notary public's official stamp, if using, except when requested by the Office or a designee, a judicial subpoena, and, with precautions, electronic document preparation and transmission vendors.
- a. Control of security aspects, such as, but not limited to, passwords, token devices, biometrics, PINS, phrases, software on protected hardware shall remain under the sole control of the notary public.
- (d) Upon resignation, revocation, or expiration of the notary public's commission or the notary public's electronic notary specialty endorsement, the notary public shall destroy and disable their electronic signature and electronic official stamp, if using, including any coding, disk, digital certificate, card, software or password that enables the notary public to attach or logically associate the electronic signature or electronic official stamp, if using, to the electronic record, so as to prohibit the use of the electronic signature or electronic official stamp by any other person.
- (e) A notary public shall immediately notify the Office of the theft of the notary public's electronic signature, electronic official stamp, if using, or digital certificate.

Part 7: Effective Dates; Expiration

All parts of 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, except for Part 4 of these Rules which shall take effect on March 23 and remain in effect for 180 days thereafter.