

Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020

Requirements for Notarization of an Electronic Record

- Authorizes a notary to notarize an electronic record that occurs in or affects interstate commerce if the following requirements are met:
 - a stamp or seal of office is attached to or logically associated with the electronic record;
or
 - the notary's electronic signature and any other required information is attached to or logically associated with the signature or electronic record; and
 - the stamp, seal, electronic signature, or other information is securely bound to the record in a manner that allows for independent verification and evidence of any changes or modifications to the record.

Requirements for Remote Notarization

- Authorizes notarizations that occur in or affect interstate commerce for individuals not in the physical presence of the notary if the following requirements are met:
 - the individual and the notary are able to communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization;
 - the notary public has reasonably identified the individual by one or more of the following:
 - personal knowledge;
 - through public or private date using at least two 3rd party verification services or processes; or
 - oath or affirmation of a credible witness who:
 - is in the physical presence of the notary public or the individual, or is able to communicate with the notary public and the individual simultaneously by sight and sound through an electronic device or process at the time of the notarization;
 - has personal knowledge of the individual ; and
 - has been reasonably identified by the notary through personal knowledge or at least two 3rd party verification methods
 - The notary public, either directly or through an agent:
 - creates an audio and visual recording of the performance of the notarization;
and

- retains the recording during the term of the notary public's office, unless state law requires a different retention period, and subject to any state laws regarding the content, retention, security, use, effect, and disclosure of the recording and any information contained in the recording
 - For an individual physically located outside of the U.S. at the time of the notarization:
 - the record is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the U.S.; or
 - involves property located in the U.S. or a transaction substantially connected to the U.S.; and
 - the notary public has no actual knowledge that the act of making the statement or signing the record is prohibited by the laws of the jurisdiction in which the individual is physically located
- Establishes that a state or federal law requiring personal or physical presence before the notary at the time of a notarization is satisfied if the individual and the notary can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization.

Recognition of Notarizations in Federal Court

- Requires federal courts to recognize any notarization performed by a notary public in a state outside of where the federal court is located if the following requirements are met:
 - the notarization occurs in or affects interstate commerce; and
 - for a tangible record, a stamp or seal is affixed or embossed on the record
 - for an electronic record:
 - a stamp or seal of office is attached to or logically associated with the electronic record; or
 - the electronic signature of the notary public, and all other information required to be included is attached to or logically associated with the electronic record

Interstate Recognition of Notarizations

- Requires each state to recognize notarizations performed by a notary in another state if the following requirements are met:
 - the notarization was performed under or relates to a public Act, record, or judicial proceeding of the state in which the notary is commissioned; or
 - the notarization occurs in or affects interstate commerce; and
 - a stamp or seal is affixed or embossed on a tangible record, or, in the case of an electronic record:

- a stamp or seal is attached to or logically associated with the electronic record; or
- the electronic signature of the notary, and all other information required to be included, is attached to or logically associated with the electronic record.

Electronic and Remote Notarization Not Required

- The Act does not require a notary to notarize an electronic record; perform a notarization for an individual not in the presence of the notary; or perform a notarization using a technology the notary has not selected

Rights of Aggrieved Persons Not Affected; No Effect on State Laws on Practice of Law

- The validity and recognition of a notarization under the Act does not prevent a person from seeking to invalidate a record or transaction, or from seeking other remedies under state or federal law for any reason not addressed in the Act, including on the basis:
 - that the person did not intend to authenticate or adopt a record;
 - that the individual was incompetent, lacked authority or capacity, or did not knowingly and voluntarily execute a record; or
 - of fraud, forgery, mistake, misrepresentation, impersonation, duress, undue influence, or other invalidating cause
- Nothing in the Act affects a state law governing, authorizing, or prohibiting the practice of law

Exception to Preemption

A state law is not affected by any provision in the Act if the state law:

- constitutes an enactment of the Revised Uniform Law on Notarial Acts (RULONA), except that any modification to RULONA in state law is preempted to the extent that it is inconsistent with the Act;
- specifies additional or alternative procedures or requirements for the performance of notarizations with respect to electronic records or for individuals not in the physical presence of a notary, if:
 - the additional or alternative procedures or requirements are consistent with the Act, and do not accord greater legal effect to the implementation or application of a specific technology or technical specification for performing the notarizations

Validity of Notarizations; Standard of Care; Special Notarial Commission; Savings Clause

- The failure of a notary to meet a requirement specified in the Act does not invalidate or impair the recognition of a notarization performed by the notary

- The Act does not to create a public or private cause of action or remedy
- The Act does not prevent a state or a commissioning official from:
 - adopting a requirement in the Act as a duty or standard of care under the laws of the state or sanctioning a notary for breach of the duty or standard
 - establishing requirements and qualifications for, denying, refusing to renew, revoking, suspending, or imposing a condition on a commission as a notary; or
 - creating or designating a class or type of commission, or requiring an endorsement or other authorization to be received by a notary, as a condition on the authority to perform notarial acts with respect to electronic records or for individuals not in the physical presence of the notary public
- A notary may not perform an electronic or remote notarization under the Act if:
 - the state has enacted a law that creates or designates a class or type of commission, or requires an endorsement or other authorization to be received by a notary public, as a condition on the authority to perform notarial acts with respect to electronic records or for individuals not in the physical presence of the notary public; and
 - the notary public's commission is not of the class or type or the notary public has not received the endorsement or other authorization
- The Act does not affect the validity a notarization performed before the effective date of the Act

Severability

- If any provision of the Act or the application of the provision to any person or circumstance is held to be invalid or unconstitutional, the remainder of the Act and the application of the provisions to other persons or circumstances is not be affected.