

Guidance for Remote Notaries and Consumers

PREAMBLE

In conjunction with Governor Pritzker's Executive Order 2020-14, the Office of the Secretary of State is issuing guidance to Illinois notaries public who are equipped to perform notarizations remotely using real-time electronic technologies that feature high-quality audio-visual communication. The temporary authority for an Illinois notary to perform remote, online notarizations shall expire when the Gubernatorial Disaster Proclamation of March 9, 2020, is rescinded.

The Offices of the Governor and Secretary of State have diligently sought viable alternatives to traditional, person-to-person notarizations due to the health concerns prevalent from the COVID-19 outbreak. In seeking these alternatives, protection for consumers has been paramount. Any citizen who is in need of notarized documents should be equally diligent by selecting a notary public who is known and trusted or who is working with his or her attorney, lending institution, realtor, financial advisor or health care professional.

Further, Executive Order 2020-14 or the Illinois Notary Public Act does not prohibit any citizen of Illinois from soliciting notarial service from the numerous, well-established electronic notarization companies that can connect those in need of notarized documents with trained and qualified notaries whose notarial acts are acceptable in Illinois. These firms offer the highest standards for privacy, security and recordkeeping, which are necessities for consumers, as well as the recipients of notarized documents.

DEFINITIONS

The following definitions shall apply to the terms used in the Governor's Executive Order 2020-14:

"Audio-video communication" means communication by which a person is able to see, hear and communicate with another person in real time using electronic means.

"Commissioned" means a notary whose application has been approved by the Secretary of State and the appointment has been properly recorded with the county clerk, pursuant to 5 ILCS 312/2-106.

"Communication technology" means an electronic device or process that allows a notary public and a remotely located person to communicate with each other simultaneously by audio-video communication.

"Electronic" means information that is remotely created, generated, sent, communicated, received, or stored by electronic means.

"In the presence of" or "appear before" means:

- (1) Being in the same physical location as another person and close enough to see, hear, communicate with and exchange credentials with that person; or
- (2) Being in a different physical location from another person, but able to see, hear and communicate with the person by means of audio-video communication that meets any terms of an Executive Order issued by the Governor of the State of Illinois.

“Law” includes any statute, regulation or rule of law.

“Notarial act” means an act, including taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

“Notary” means a person who is authorized to perform notarial acts such as taking an acknowledgment, administering an oath or affirmation, taking a verification upon oath or affirmation, and witnessing or attesting a signature as provided in 6-101 of the Illinois Notary Public Act. “Notary” and “notary public” may be used interchangeably throughout.

“Principal” means the person signing the document in the presence or remote presence of the notary public.

“Remote notarial act” means an act that a notary public of this State is authorized to perform. The term includes: (1) taking an acknowledgment; (2) administering an oath or affirmation; (3) certifying a true and correct copy; and (4) performing such other duties as may be prescribed by a specific statute performed by remote means. An act performed remotely may be done by audio-video communication or by an electronic platform capable of performing an act under the provisions provided herein. “Remotely” and “electronically” may be used interchangeably throughout this section.

“Remote notarization” means the form of an acknowledgment, verification on oath or affirmation, or verification of witness or attestation that is completed remotely by a notary public and:

- (1) Contains the notary’s signature, seal, title and commission, and expiration date;
- (2) Contains other required information concerning the date and place of the remote online notarization;
- (3) Otherwise conforms to the requirements for an acknowledgment, verification on oath or affirmation, or verification of witness or attestation under the laws of this State; and
- (4) Indicates that the person making the acknowledgment, oath, or affirmation appeared remotely.

“Remote presentation” means the transmission of a quality image of a government-issued identification credential to a notary public through communication technology for the

purpose of enabling the notary public to identify the person appearing before the notary public and to perform a credential analysis.

“Secretary” means the Secretary of State of Illinois.

REQUIREMENTS OF REMOTE NOTARIZATION

Before performing a remote notarial act or signing a document in a remote notarial act, be advised:

1. Each notary should review the Illinois Notary Public Act, 5 ILCS 312, and the Illinois Notary Public handbook before performing any remote notarizations. The terms of this act and all requirements and prohibitions therein remain in full force and effect during this emergency.
2. Both the notary and the customer must be physically present in the State of Illinois at the time the remote notarization is performed.
3. The remote notary act must be done by two-way, real time audio-video communication that allows for direct interaction between the notary and the consumer. The audio-video connection must be of quality resolution in order for the notary to properly examine the identification credentials offered by the customer. This audio-video communication must be retained by the notary for a period of not less than three years.
4. The customer must show the notary each and every page of the document the customer is signing. The customer should initial each page in turn to ensure that the notarized document is complete.
5. All transactions performed by remote notarization may be replicated by the notary if required by any other state law, local or county ordinance, or by the customer. The replicated signature on the original document signed by the customer shall be dated the date of the remote notarial transaction.
6. Executive Order 2020-14 does not prohibit Illinois notaries from utilizing the electronic or remote notarization platforms available that meet industry standards and each of the requirements provided by the Governor’s Executive Order. Notaries shall have that option during the term of the Governor’s Disaster Proclamation and documents notarized during that time should be considered acceptable by industries requiring notarizations.
7. No notary shall be required to perform a remote notarial transaction, nor must a notary perform a transaction when he or she is not satisfied by the identification credentials offered by the customer, or has any reason to believe that there is fraud, duress or coercion against the customer.
8. Any documents remotely notarized during the term of Executive Order 2020-14, shall be deemed valid and treated as if the document had been notarized via in-person transaction.
9. A paper or tangible copy of an electronic document that a notary public has certified to be a true and correct copy satisfies requirements of law that the signatures and attestations contained in the document are original and authentic.

10. The Secretary of State retains the authority and jurisdiction to investigate any allegations of notarial misconduct and shall continue to refer any substantiated allegations to the proper law enforcement authorities throughout the State of Illinois.