

**SUMMARY OF DEPARTMENT OF LICENSING
EMERGENCY RULE ON
REMOTE NOTARY ACTS & ENDORSEMENT TO NOTARY PUBLIC LICENSE
(Amending Chapter 308-30 WAC | Effective March 26, 2020)**

Background to Emergency Rulemaking

Governor Inslee has issued a State of Emergency Proclamation (20-27) in relation to suspending the delay effective date (October 1, 2020) of RCW 42.45.280, which was added to the Revised Uniform Law on Notarial Acts (“RULONA”) [SB 5641, 2019 c 154 s 1], a law administered by the Department of Licensing. By operation of law, the Governor’s Proclamation made RCW 42.45.280 with respect to “remote notarial acts” by electronic means effective immediately, subject to required rulemaking. Although the Proclamation is itself effective for only 30 days from March 27, 2020 until midnight April 26, 2020), it may be extended by a written agreement of the Legislature’s Leadership¹ until such as the Legislature convenes and makes a further extension by concurrent resolution. Note again that without a state of emergency proclamation in effect, RCW 42.45.280 will be in effect anyway as of October 1, 2020.

Pursuant to its authority under of the Governor’s Proclamation, the Department of Licensing issued emergency rules effective as of March 27, 2020, authorizing remote notarial acts using electronic means. *See* attached Emergency Rulemaking (OTS 2172.1 and Washington State Register No. 20-08-071).

“Remote Notarial Act” Defined

Under this Emergency Rule, a "remote notarial act" means a notarization that is performed electronically using approved audio-video technology that allows for direct interaction between the notary and the individuals that are remotely located.

“Appear Personally” Redefined

Under RULONA and Chapter 308-30 WAC, an individual whose signature is to be notarized must “appear personally” before the notary public. The Emergency Rule amends the definition of "appear personally" to include a “remote notarial act” and specifies that for “remote notarial acts,” “appear personally” means “being in a different physical location from another individual but able to see, hear, and communicate with that individual by means of communication technology.”

Requirement of “Remote Notary Endorsement” to Electronic Records Notary Public Commission

Under the Emergency Rule, a “remote notarial act” may only be performed by a commissioned notary public who has received from the Department of Licensing a ***remote notary endorsement***. A notary public may only apply for a remote notary endorsement if they:

¹ Senate Majority Leader, Senate Minority Leader, Speaker of the House, and House Minority Leader.

- (1) Currently hold an active notary public commission and with an electronic records notary public endorsement;
- (2) Currently hold an active notary public commission and are applying for an electronic records notary public endorsement and a remote notary endorsement simultaneously; or
- (3) Are applying for a notary public commission, an electronic records notary public endorsement, and a remote notarial acts endorsement simultaneously.

Maximum Fee for “Remote Notarial Act”

The maximum fees a notary public may charge to perform a “remote notarial act” is twenty-five dollars (\$25.00).

Authorized “Remote Notarial Acts”

Authorized “remote notarial acts” that may be performed by a commissioned notarial act having both an electronic records notary public endorsement and a remote notarial acts endorsement from the Department of Licensing include:

1. Taking an acknowledgment;
2. Taking a verification on oath or affirmation;
3. Witnessing or attesting a signature;
4. Certifying or attesting a copy;
5. Certifying that an event has occurred or an act has been performed; and
6. Noting a protest of a negotiable instrument, if the notary public is:
7. Acting under the authority of an attorney who is licensed to practice law in this state or another state; or
8. Acting under the authority of a financial institution regulated by this state, another state, or the federal government.

In performing “remote notarial acts,” a notary public shall comply with all requirements for *electronic notarial acts* under Chapter 308-30 WAC.

Standards for Identity Proofing in “Remote Notarial Acts”

The Emergency Rule establishes standards for identity proofing. If when performing a remote notarial act, a notary public does not have satisfactory evidence of the identity of a remotely located individual, the notary public must reasonably verify the individual's identity through two different types of identity proofing consisting of a credential analysis procedure and a dynamic knowledge-based authentication assessment. Credential analysis must use public or private data sources to confirm the validity of the identification credential presented by a remotely located individual and must, at a minimum:

1. Use automated software processes to aid the notary public in verifying the identity of each remotely located individual;
2. Require the identification credential to pass an authenticity test, consistent with sound commercial practices, which uses appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features and to confirm that the identification credential is not fraudulent or inappropriately modified;

3. Use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identification credential details; and
4. Enable the notary public visually to compare for consistency the information and photograph on the identification credential and the remotely located individual as viewed by the notary public in real time through communication technology.

A dynamic knowledge-based authentication assessment is successful if it meets the following requirements:

A notary public has satisfactory evidence of the identity of a remotely located individual if:

1. The notary public has personal knowledge of the identity of the individual; or
2. The individual is identified by oath or affirmation of a credible witness in accordance with the following requirements:
 - a. To be a credible witness, the witness must have personal knowledge of the remotely located individual;
 - b. The notary public must have personal knowledge of the credible witness or verify the identity of the credible witness by two different types of identity proofing as discussed above; and
 - c. A credible witness may be outside the physical presence of the notary public or remotely located individual if the notary public, credible witness, and remotely located individual can communicate by using communication technology.

Permissible Communication Technology

The Emergency Rule also established standards for permissible communication technology. Communication technology for remote notarial acts must provide for synchronous audio-visual feeds of sufficient audio clarity and video resolution to enable the notary public and remotely located individual to see and speak with each other. The process must provide a means for the notary public reasonably to confirm that an 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. Communication technology must provide reasonable security measures to prevent unauthorized access to:

1. The live transmission of the audio-visual feeds;
2. The methods used to perform identify verification; and
3. The electronic record that is the subject of the remote notarial act.

If a remotely located individual must exit the workflow, the individual must restart the required identity verification process from the beginning.

Certificate of Notarial Act for Remote Notarial Acts

A form of notarial certificate for a remote notarial act satisfies the requirements of RULONA if it is in the form provided by applicable law and contains a statement substantially as follows: "This notarial act involved the use of communication technology."

See Emergency Rule for authorized forms of acknowledgement.

Retention of Audio-Visual Recordings and Repositories

Under the Emergency Rule, a notary public must retain any audio-visual recording created under RULONA in a computer or other electronic storage device that protects the recording against unauthorized access by password or other secure means of authentication. The recording must be created in an industry-standard audio-visual file format and must not include images of any electronic record that was the subject of the “remote notarial act.” An audio-visual recording must be retained for at least ten (10) years after the recording is made. A notary public must take reasonable steps to ensure that a backup of the audio-visual recording exists and is secure from unauthorized use. The fact that the notary public's employer, contractor, or repository keeps or stores any audio-visual recordings shall not relieve the notary of the duties required by these rules. The personal representative or guardian of a notary public shall follow RCW 42.45.280(6) related to the disposition of the notary public's audio-visual recordings upon the death or adjudication of in-competency of the notary public. The notary public, or the notary's personal representative or guardian, shall provide access instructions to the Department of Licensing for any audio-visual recordings maintained or stored by the notary, upon commission resignation, revocation, or expiration without renewal, or upon the death or adjudication of incompetency of the notary. A notary public, or the notary's personal representative or guardian, may by written contract engage a third party to act as a repository to provide the required storage. A third party under contract is deemed a repository under RCW 42.45.280(6). Any such contract under must: (1) enable the notary public, or the notary's personal representative or guardian, to comply with the retention requirements of this section even if the contract is terminated; or (2) provide that the information will be transferred to the notary public, or to the notary's personal representative or guardian, if the contract is terminated.

More Detailed Specifics

See Emergency Rule.