



Notice of Temporary Adoption

Office of the Secretary of State Notary Program Rules 8 CCR 1505-11

October 15, 2020

I. Adopted Rule Amendments

As authorized by the Colorado Notaries Public Act¹ and the State Administrative Procedure Act², the Colorado Secretary of State gives notice that the following amendments to the Notary Program Rules³ are adopted on a temporary basis and effective immediately. (SMALL CAPS indicate proposed additions to the current rules. Stricken type indicates proposed deletions from current rules. *Annotations* may be included):

Current 8 CCR 1505-11 is amended as follows:

Readopting Rule 5:

RULE 5 – REMOTE NOTARIZATION

5.1 DEFINITIONS

AS USED IN THESE RULES, UNLESS STATED OTHERWISE:

- 5.1.1 “AUDIO-VIDEO COMMUNICATION” MEANS COMMUNICATION BY WHICH AN INDIVIDUAL IS ABLE TO SEE, HEAR, AND COMMUNICATE WITH A REMOTELY LOCATED INDIVIDUAL IN REAL TIME USING ELECTRONIC MEANS.
- 5.1.2 “OUTSIDE THE UNITED STATES” MEANS A LOCATION OUTSIDE THE GEOGRAPHIC BOUNDARIES OF THE UNITED STATES, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, AND ANY TERRITORY OR INSULAR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES.
- 5.1.3 “REAL TIME” OR “IN REAL TIME” MEANS, WITH RESPECT TO AN INTERACTION BETWEEN INDIVIDUALS BY MEANS OF AUDIO-VIDEO COMMUNICATION, THAT THE INDIVIDUALS CAN SEE AND HEAR EACH OTHER SUBSTANTIALLY SIMULTANEOUSLY AND WITHOUT INTERRUPTION OR DISCONNECTION. DELAYS OF A FEW SECONDS THAT ARE INHERENT IN THE METHOD OF COMMUNICATION DO NOT PREVENT THE INTERACTION FROM BEING CONSIDERED TO HAVE OCCURRED IN REAL TIME.

¹ Article 21, Title 24 of the Colorado Revised Statutes.

² Section 24-4-103(3)(a), C.R.S. (2020).

³ 8 CCR 1505-11.

- 5.1.4 "REMOTELY LOCATED INDIVIDUAL" MEANS AN INDIVIDUAL WHO IS NOT IN THE PHYSICAL PRESENCE OF THE NOTARY PUBLIC WHO PERFORMS A NOTARIAL ACT UNDER THIS RULE 5.
- 5.1.5 "REMOTE NOTARIZATION" MEANS AN ELECTRONIC NOTARIAL ACT PERFORMED WITH RESPECT TO A RECORD BY MEANS OF REAL-TIME AUDIO-VIDEO COMMUNICATION IN ACCORDANCE WITH RULE 5.
- 5.1.6 "REMOTE NOTARIZATION SYSTEM" MEANS ANY ELECTRONIC DEVICE OR PROCESS THAT ALLOWS A NOTARY PUBLIC AND A REMOTELY LOCATED INDIVIDUAL TO COMMUNICATE WITH EACH OTHER SIMULTANEOUSLY BY SIGHT AND SOUND SUCH AS MAINSTREAM VIDEOCONFERENCING TECHNOLOGIES, INCLUDING THOSE IN PHONE APPLICATION FORM, THAT WILL RECORD THE ENTIRE COMMUNICATION.
- 5.1.7 "REMOTE PRESENTATION" MEANS THE TRANSMISSION TO THE NOTARY PUBLIC THROUGH THE DEVICES OR PROCESSES REFERENCED IN RULE 5.1.6 OF AN IMAGE OF A GOVERNMENT-ISSUED IDENTIFICATION THAT IS SUFFICIENT QUALITY TO ENABLE THE NOTARY PUBLIC TO IDENTIFY THE REMOTELY LOCATED INDIVIDUAL SEEKING THE NOTARY PUBLIC'S SERVICES.

5.2 REQUIREMENTS TO PERFORM REMOTE NOTARIZATION

- 5.2.1 A NOTARY PUBLIC MAY PERFORM A REMOTE NOTARIZATION ONLY FOR A REMOTELY LOCATED INDIVIDUAL WHO IS LOCATED IN THE STATE OF COLORADO.
- 5.2.2 EXCLUSIONS

A NOTARY PUBLIC MUST NOT USE A REMOTE NOTARIZATION SYSTEM TO NOTARIZE:

 - (A) A RECORD RELATING TO THE ELECTORAL PROCESS; OR
 - (B) A WILL AS DEFINED UNDER SECTION 15-10-201(59), C.R.S., EXCEPT AS REQUIRED IN ACCORDANCE WITH 5.2.9(c).
- 5.2.3 A NOTARY PUBLIC WHO PERFORMS A NOTARIAL ACT FOR A REMOTELY LOCATED INDIVIDUAL BY MEANS OF AUDIO-VIDEO COMMUNICATION MUST BE CURRENTLY COMMISSIONED IN THE STATE OF COLORADO AND LOCATED IN THE STATE OF COLORADO AT THE TIME THE NOTARIAL ACT IS PERFORMED.
- 5.2.4 THE REMOTE NOTARIZATION SYSTEM USED TO PERFORM REMOTE NOTARIZATIONS MUST BE SUFFICIENT TO:
 - (A) ENABLE THE NOTARY PUBLIC TO VERIFY THE IDENTITY OF THE REMOTELY LOCATED INDIVIDUAL AND ANY REQUIRED WITNESS BY MEANS OF PERSONAL KNOWLEDGE OR SATISFACTORY EVIDENCE OF IDENTITY;
 - (B) ENABLE THE NOTARY PUBLIC TO VERIFY THAT THE NOTARY PUBLIC, THE REMOTELY LOCATED INDIVIDUAL, AND ANY REQUIRED WITNESS ARE VIEWING THE SAME RECORD AND THAT ALL SIGNATURES, CHANGES, AND ATTACHMENTS TO THE RECORD MADE BY THE REMOTELY LOCATED INDIVIDUAL AND ANY REQUIRED WITNESS ARE MADE IN REAL TIME; AND
 - (C) RECORD THE INTERACTION SUCH THAT THE VERIFICATIONS MAY BE CLEARLY VIEWED AT A LATER DATE.
- 5.2.5 REQUIREMENTS FOR ENSURING SATISFACTORY EVIDENCE OF IDENTITY

- (A) A NOTARY MUST DETERMINE FROM PERSONAL KNOWLEDGE OR SATISFACTORY EVIDENCE THAT THE REMOTELY LOCATED INDIVIDUAL APPEARING BEFORE THE NOTARY PUBLIC BY MEANS OF AUDIO-VIDEO COMMUNICATION IS THE INDIVIDUAL THAT HE OR SHE CLAIMS TO BE.
 - (B) A NOTARY PUBLIC HAS SATISFACTORY EVIDENCE OF IDENTITY IF THE NOTARY PUBLIC CAN IDENTIFY THE REMOTELY LOCATED INDIVIDUAL BY MEANS OF AUDIO-VIDEO COMMUNICATION BY USING AT LEAST ONE OF THE FOLLOWING METHODS:
 - (1) THE OATH OR AFFIRMATION OF A CREDIBLE WITNESS WHO PERSONALLY KNOWS THE REMOTELY LOCATED INDIVIDUAL, IS PERSONALLY KNOWN TO THE NOTARY PUBLIC OR PRESENTS EVIDENCE OF IDENTITY WITH GOVERNMENT-ISSUED IDENTIFICATION AS REQUIRED BY SECTION 24-21-507, C.R.S., AND IS IN THE PHYSICAL PRESENCE OF THE NOTARY PUBLIC OR THE REMOTELY LOCATED INDIVIDUAL;
 - (2) REMOTE PRESENTATION OF A GOVERNMENT-ISSUED IDENTIFICATION AND THE DATA CONTAINED ON THE IDENTIFICATION OF THE REMOTELY LOCATED INDIVIDUAL AS REQUIRED BY SECTION 24-21-507, C.R.S..
- 5.2.6 CONSISTENT WITH SECTION 24-21-508, C.R.S., A NOTARY PUBLIC MAY REFUSE TO PERFORM A NOTARIAL ACT UNDER RULE 5 IF THE NOTARY PUBLIC IS NOT SATISFIED THAT THE REQUIREMENTS OF THIS RULE 5 ARE MET.
- 5.2.7 THE CERTIFICATE OF NOTARIAL ACT FOR A REMOTE NOTARIZATION MUST, IN ADDITION TO COMPLYING WITH THE REQUIREMENTS OF SECTION 24-21-515, C.R.S., INDICATE THAT THE NOTARIAL ACT WAS PERFORMED USING AUDIO-VIDEO TECHNOLOGY.
- 5.2.8 REQUIREMENTS FOR AUDIO-VIDEO RECORDING
- (A) A NOTARY PUBLIC MUST CREATE AN AUDIO-VIDEO RECORDING OF A REMOTE NOTARIZATION AND MUST:
 - (1) FIRST DISCLOSE TO THE REMOTELY LOCATED INDIVIDUAL THE FACT OF THE RECORDING AND THE DETAILS OF ITS INTENDED STORAGE, INCLUDING WHERE AND FOR HOW LONG IT WILL BE STORED;
 - (2) ENSURE THAT THE REMOTELY LOCATED INDIVIDUAL EXPLICITLY CONSENTS TO BOTH THE RECORDING AND THE STORAGE OF THE RECORDING; AND
 - (3) SECURELY STORE THE RECORDING FOR A PERIOD OF TEN YEARS IN COMPLIANCE WITH SECTION 24-21-519, C.R.S.
 - (B) THE NOTARY MUST MAKE A GOOD FAITH EFFORT TO ONLY INCLUDE THE INFORMATION REQUIRED IN RULE 5.2.8(c).
 - (C) THE AUDIO-VIDEO RECORDING MUST CONTAIN :
 - (1) AT THE BEGINNING OF THE RECORDING, A RECITATION BY THE NOTARY PUBLIC SUFFICIENT TO IDENTIFY THE NOTARIAL ACT INCLUDING:
 - (A) THE NAME OF THE NOTARY PUBLIC;
 - (B) THE DATE AND TIME OF THE NOTARIAL ACT;

- (C) A DESCRIPTION OF THE DOCUMENT OR DOCUMENTS TO WHICH THE NOTARIAL ACT RELATES;
 - (D) THE IDENTITY OF THE REMOTELY LOCATED INDIVIDUAL WHOSE SIGNATURE WILL BE THE SUBJECT OF THE NOTARIAL ACT;
 - (E) THE IDENTITY OF ANY PERSON WHO WILL ACT AS A CREDIBLE WITNESS, IF REQUIRED, TO IDENTIFY THE SIGNER; AND
 - (F) THE METHOD OR METHODS BY WHICH THE REMOTELY LOCATED INDIVIDUAL AND ANY WITNESS, IF REQUIRED, WILL BE IDENTIFIED TO THE NOTARY PUBLIC.
- (2) A DECLARATION BY THE REMOTELY LOCATED INDIVIDUAL THAT HIS OR HER ACTIONS BEFORE THE NOTARY PUBLIC ARE KNOWINGLY AND VOLUNTARILY MADE;
 - (3) IF THE REMOTELY LOCATED INDIVIDUAL FOR WHOM THE NOTARIAL ACT IS BEING PERFORMED IS IDENTIFIED BY PERSONAL KNOWLEDGE, AN EXPLANATION BY THE NOTARY PUBLIC AS TO HOW THE NOTARY PUBLIC KNOWS THE REMOTELY LOCATED INDIVIDUAL AND FOR HOW LONG;
 - (4) IF THE REMOTELY LOCATED INDIVIDUAL IS IDENTIFIED BY A CREDIBLE WITNESS:
 - (A) A STATEMENT BY THE NOTARY PUBLIC AS TO HOW THE NOTARY PUBLIC KNOWS THE CREDIBLE WITNESS AND FOR HOW LONG THE NOTARY PUBLIC HAS KNOWN THE CREDIBLE WITNESS OR EVIDENCE OF IDENTITY USING GOVERNMENT-ISSUED IDENTIFICATION AS REQUIRED BY SECTION 24-21-507, C.R.S.; AND
 - (B) AN EXPLANATION BY THE CREDIBLE WITNESS AS TO HOW THE CREDIBLE WITNESS KNOWS THE REMOTELY LOCATED INDIVIDUAL;
 - (5) ANY OTHER STATEMENTS, ACTS, AND CONDUCT NECESSARY TO PERFORM THE REQUESTED NOTARIAL ACT.
- (D) THE PROVISIONS OF SECTION 24-21-519, C.R.S., THAT RELATE TO THE SECURITY, INSPECTION, COPYING, RETENTION, AND DISPOSITION OF A NOTARY PUBLIC'S JOURNAL APPLY EQUALLY TO THE SECURITY, INSPECTION, COPYING, RETENTION, AND DISPOSITION OF AUDIO-VIDEO RECORDINGS REQUIRED BY THIS SECTION.

5.2.9 TRANSMITTAL OF RECORD TO BE NOTARIZED

- (A) AFTER THE NOTARY PUBLIC PERFORMS THE NOTARIAL ACT, THE REMOTELY LOCATED INDIVIDUAL MUST TRANSMIT A LEGIBLE COPY OF THE RECORD BY FAX, EMAIL, OR OTHER ELECTRONIC MEANS DIRECTLY TO THE NOTARY ON THE SAME DATE THAT THE ACT TOOK PLACE; AND
- (B) THE NOTARY PUBLIC MUST NOTARIZE THE TRANSMITTED COPY OF THE DOCUMENT AS SOON AS RECEIVED AND TRANSMIT THE SAME BACK TO THE PERSON.
- (C) IF THE RECORD IS A WILL, AS DEFINED UNDER SECTION 15-10-201(59) C.R.S.:
 - (1) THE ORIGINAL SIGNED RECORD MUST BE PRESENTED TO THE NOTARY PUBLIC WITHIN 15 CALENDAR DAYS OF THE DATE OF THE REMOTE NOTARIZATION; AND

- (2) WITHIN THREE CALENDAR DAYS OF RECEIVING THE SIGNED RECORD, THE NOTARY PUBLIC MUST CONFIRM THAT SUCH RECORD IS IDENTICAL TO THE RECORD REMOTELY NOTARIZED UNDER RULE 5.2, AND, IF SO, AFFIX THE NOTARY PUBLIC'S SIGNATURE AND SEAL ON TO THE ORIGINAL SIGNED RECORD, REFLECTING THE DATE OF THE REMOTE NOTARIZATION.
- (3) A WILL OF A REMOTELY LOCATED TESTATOR IS NOT ACKNOWLEDGED IN ACCORDANCE WITH SECTION 15-11-502(1)(c)(II), C.R.S. UNLESS IT IS NOTARIZED PURSUANT TO ALL THE REQUIREMENTS OF 5.2.9(C).

5.3 A NOTARY PUBLIC MUST RECORD ALL REMOTE NOTARIZATIONS IN HIS OR HER NOTARY JOURNAL.

5.4 NOTARIES PERFORMING REMOTE NOTARIZATION, MAINSTREAM VIDEOCONFERENCING TECHNOLOGY COMPANIES AND REMOTE NOTARIZATION VENDORS MUST NOT USE, SELL, OR OFFER TO SELL TO ANOTHER PERSON OR TRANSFER TO ANOTHER PERSON ANY PERSONAL INFORMATION, INCLUDING RELATED TO THE INDIVIDUAL OR THE TRANSACTION, OBTAINED UNDER THIS RULE 5 THAT PERTAINS TO THE REMOTELY LOCATED INDIVIDUAL, A WITNESS TO A REMOTE NOTARIZATION, OR AN INDIVIDUAL NAMED IN A RECORD PRESENTED FOR REMOTE NOTARIZATION, EXCEPT:

5.4.1 AS NECESSARY TO FACILITATE PERFORMANCE OF A NOTARIAL ACT;

5.4.2 TO EFFECT, ADMINISTER, ENFORCE SERVICE, OR PROCESS A RECORD PROVIDED BY OR ON BEHALF OF THE INDIVIDUAL OR THE TRANSACTION OF WHICH THE RECORD IS A PART;

5.4.3 IN ACCORDANCE WITH THIS RULE 5 OR OTHER APPLICABLE FEDERAL, STATE OR LOCAL LAW;

5.4.4 TO COMPLY WITH A LAWFUL SUBPOENA OR COURT ORDER; OR

5.4.5 IN CONNECTION WITH A PROPOSED OR ACTUAL SALE, MERGER, TRANSFER, OR EXCHANGE OF ALL OR A PORTION OF A BUSINESS OR OPERATING UNIT OF THE PROVIDER IF THE PERSONAL INFORMATION CONCERNS ONLY CUSTOMERS OR THE BUSINESS OR UNIT AND THE TRANSFEREE AGREES TO COMPLY WITH THE RESTRICTIONS SET FORTH IN THIS RULE 5.4.

II. Basis, Purpose, and Specific Statutory Authority

A Statement of Basis, Purpose, and Specific Statutory Authority follows this notice and is incorporated by reference.

III. Statement of Justification and Reasons for Adoption of Temporary Rules

A statement of the Secretary of State’s findings to justify the immediate adoption of this new rule on a temporary basis follows this notice and is incorporated by reference.⁴

IV. Effective Date of Adopted Rules

These rule amendments are effective immediately.

Dated this 15th day of October, 2020,

Ian Rayder
Deputy Secretary of State

For

Jena Griswold
Colorado Secretary of State

⁴ Section 24-4-103(6), C.R.S. (2020).



Statement of Basis, Purpose, and Specific Statutory Authority

Office of the Secretary of State Notary Program Rules 8 CCR 1505-11

October 15, 2020

I. Basis and Purpose

This statement explains amendments to the Colorado Secretary of State Notary Program Rules. The purpose of the changes is to ensure the uniform and proper administration, implementation, and enforcement of the Colorado Revised Uniform Law On Notarial Acts (RULONA)¹ and to answer questions arising under the Act. Specifically, the changes include:

- Readopting Rule 5 - Remote Notarization

On March 10, 2020, the Colorado Governor declared a disaster emergency due to the COVID-19 contagion. On March 28, 2020, the Colorado Governor issued Executive Order D 2020 019, suspending the requirement for personal appearance before a notary officer as set forth in Section 24-21-506, C.R.S. Executive Order D 2020 087, which extended Executive Orders D 2020 019, 030, and 047, expire on June 28, 2020. On June 26, 2020, the Colorado Governor signed Senate Bill 20-096 concerning an authorization for notaries public to perform notarial acts using audio-video communication. In accordance with new statutory authority, the Secretary readopted Rule 5 on a temporary basis as is necessary to authorize and establish minimum standards for remote notarizations. Today, October 15, 2020, the Secretary of State readopts the temporary rules to continue the rules until permanent rules are established. The Secretary of State simultaneously issued a notice of permanent rulemaking. (For reference: temporary Rule 5 was initially adopted on March 30, 2020, under CCR Tracking #2020-00167 and extended on June 26, 2020, under CCR Tracking #2020-00446.)

II. Rulemaking Authority

The statutory authority is as follows:

- Section 24-21-527(1)(a), C.R.S., (2020), which authorizes the Secretary of State to “[p]rescribe the manner of performing notarial acts regarding tangible and electronic records[.]”

¹ Article 21, Title 24 of the Colorado Revised Statutes.

- Section 24-21-527(1)(c), C.R.S., (2020), which authorizes the Secretary of State to “[i]nclude provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures[.]”
- Section 24-21-527(1)(e), C.R.S., (2020), which authorizes the Secretary of State to “[i]nclude provisions to prevent fraud or mistake in the performance of notarial acts[.]”
- Section 24-21-527(1)(g), C.R.S., (2020), which authorizes the Secretary of State to “[p]rescribe the manner of performing notarial acts using audio-video communication technology, including provisions to ensure the security, integrity, and accessibility of records relating to those acts[.]”
- Section 24-21-527(1)(h), C.R.S., (2020), which authorizes the Secretary of State to “[p]rescribe requirements for the approval and use of remote notarization systems and storage systems.”