

APPENDIX
REMOTE NOTARIAL ACTS
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P.L. 2020, c.26 allows notaries and authorized officials to execute remote notarial acts during the public health emergency and state of emergency declared by the Governor in Executive Order 103 of 2020. In accordance with this law, and on behalf of the State Treasurer, the Division of Revenue and Enterprise Services (Division) appends the following provisions to the New Jersey Notary Public Manual. The provisions are intended to facilitate the effective implementation of the law. They include recommended practices published by authorities in this practice space – namely, the National Notary Association (NNA), Mortgage Industry Standards Maintenance Organization (MISMO), and National Association of Secretaries of State (NASS). These practices are incorporated by reference herein. Interested parties should consult the references at the end of this Appendix to access details on these practices.

*Note: These provisions and the authorization to perform remote notarial acts pursuant to P.L. 2020, c.26, are temporary. Notaries are not permitted to execute remote notarial acts once Executive Order 103 is rescinded. The provisions outlined below are subject to change and may be adjusted based on feedback from the notary and business communities as remote notarizations occur for the first time in this State. It is a notary's obligation to routinely check for updates and ensure adherence to updated guidelines and best practices.

Notaries public must read both P.L. 2020, c.26, and these appended provisions before executing notarial acts remotely and ensure that they comply with all applicable requirements.

1. Read the law concerning remote notary acts*:
<https://www.njleg.state.nj.us/2020/Bills/A4000/3903_R1.PDF>
*This link is to the revised approved version of the bill signed by Governor Murphy. The text of the chapter law has yet to be posted. The Division will post the chapter law as soon as it is available.
2. Read the following provisions for remote notary acts:
 - a. Ensure that the remote session is interactive and secure.

A session must be live and interactive, with direct communications between the remotely located individual (Principal) and the notary. It must be secure and follow the security procedure requirements set forth by the NNA (2017).

- b. Obtain Satisfactory Evidence and Conduct Identity Proofing

Visually verify proof of identity documents – the form of satisfactory evidence listed in 1.a. of P.L. 2020, c.26, which the Principal presents **and** use one of the following methods of identity proofing to authenticate the Principal's identity:

- Dynamic Knowledge-Based Authentication (KBA) that is provided online by a third-party and that substantially follows recommended practices for this form of identification set forth by the NNA (2017) and MISMO (2019).

Note: The Division recommends that the notary not screen-share or store the information displayed to the Principal during the online KBA process. Further, personal information should not be included in the recording required by P.L. 2020, c.26, 1(b)(3), but the notary should state on the recording the identify proofing process employed and the result of the process.

- Biometric Identity Verification that is in substantial compliance with National Institute of Standards and Technology requirements as set forth in Special Publication 800-76-2, authors Grother, Salamon, and Chandramouli (2013).
- Digital Public Key Certificate issued by a trusted third party in substantial compliance with NNA's (2017) model act requirements, Appendix II/Rule2, Public Key Certificate.

c. Steps Required to Execute a Remote Notary Act

Step 1: Receive the document. A document may be presented via facsimile or other electronic means.

Step 2: Review the document presented for completeness. This review is not a formal legal review, such as the work performed by an accountant or an attorney. Rather, it is a review to ensure that there are no blanks in the document. Should blanks be discovered, the Principal must either fill them in, strike them out, or delete them and then resubmit the document to the notary.

Step 3: Ensure that the signer understands the title of the document and that the Principal is signing freely and willingly by asking brief questions as to the title and basic substance of the document.

Step 4: Use the appropriate certificate to match the type of act being executed -- for example, an acknowledgement, jurat, or proof (types and Illustrations can be found on pages 5-7 and 12-14 of the New Jersey Notary Public Manual). The certificate must indicate that the notarial act was performed remotely and using communication technology.

Step 5: Have the authenticated Principal sign the document using an electronic signature and password. Alternately, the Principal may sign the document and then transmit it to the notary via facsimile or as an attachment to an electronic mail message.

Step 6: Sign the document as the notary public.

Ensure that all electronic signatures follow the basic requirements set forth by the NNA (2017)

and NASS (2018). In accordance with these requirements, signatures must be:

- Unique to the notary;
- Capable of independent verification;
- Retained under the notary's sole control and include access protection using passwords or codes under control of the notary public; and
- Attached to or logically associated with the document in a manner that any subsequent alteration to the electronic document displays evidence of the alteration.

If the Principal transmits a document to the notary by facsimile or as an attachment to an electronic mail message, this must be done on the same date it was signed by the principal. The notary public must then: 1) print the document; 2) add the required certificate language; 3) sign as the notary; and 4) transmit the notarized document back to the Principal on the same date that the document was signed by the Principal.

Step 7: Keep a Record

For each remote notarial act, in addition to the recording required by P.L. 2020, c.26, 1(b)(3), create a record of each remote notarial act and maintain it for ten (10) years. The record shall include: 1) date and time of the act; 2) type of act; 3) title of the document; 4) date document was signed; 5) name and address of each signer and, if applicable, each witness; 6) form of identification and identity proofing used; and 7) fee charged. (Fees charged must be in accordance with New Jersey law (including N.J.S.A. 22A:4-14 for fees for acknowledgements, jurats, and proofs)

References

MISMO Remote Online Notarization Standards, Final Candidate Recommendation (CR) Version, Version 1. (2019). *The Mortgage Industry Standards Maintenance Organization*. Washington, D.C.

The Model Electronic Notarization Act. (2017). The National Notary Association. Retrieved from <https://www.nationalnotary.org/file%20library/nna/reference-library/model-enotarization-act.pdf>

NASS Support for the Revised National Electronic Notarization Standards. (2018). National Association of Secretaries of State. Retrieved from https://www.nass.org/sites/default/files/resolutions/2018-02/nass-support-revised-enotarization-standards-winter18_0.pdf

Grother, P., Salamon, W. & Chandramouli, R. (2013). *National Institute of Standards and Technology*. Retrieved from <https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-76-2.pdf>