

Ministry of the Attorney General

Modernizing the *Notaries Act*: Permitting notarial acts to be performed remotely

March/April 2021

Context

- In August 2020, a new regulation was made under the *Commissioners for Taking Affidavits Act* to set out a framework for commissioners who wish to exercise their powers without being in the physical presence of the deponent or declarant.
 - This regulation includes requirements such as: being able to see, hear and communicate with each other in real time; the need for the person administering the oath to confirm the identity of the deponent; and instructions for a modified jurat or declaration.
- An amendment to the *Notaries Act* was proclaimed on August 1, 2020 to provide for circumstances in which a notary public need not be in the physical presence of the person with respect to whom the notary public is exercising their powers. However, no regulation has been made to set out the legal framework to permit remote notarization.
- Work is underway to determine what remote notarization could look like in Ontario, and whether it could apply to hard copy documents and electronic documents.
- Further analysis is also under way to identify what safeguards would need to be established to protect recipients of notarized documents and the integrity of the notarization process.
- Various approaches are being explored at this time and no decisions have been made.

Discussion questions: General

1. Should the government **prescribe similar standards of conduct** for remote notarization to those set out for remote commissioning— such as requiring that the notary verify the identity of the person signing the notarized document and that the notary takes reasonable precautions in the execution of their duties?
2. Is there an equal need for remote commissioning of affidavits or declarations and **remote certification of notarial copies**?
 - Why would notarial copies need to be certified remotely (the task of comparing an original PAPER document with a copy is separate from how the copy and certificate are communicated to the client afterward)?
 - How could notaries certify true copies remotely?

Discussion questions: Platforms and electronic seals

3. Does your organization currently use any **special platforms** to obtain multiple signatures on a single electronic document, agreement, etc.?
 - What practices have you established to reduce risks of fraud and end-user error?
4. Do you anticipate difficulty in devising an **electronic seal**?
 - Have you ever used a platform or software that produces or validates such a seal?
5. Would the need to purchase a subscription to a remote **online notarization platform** influence your decision to offer remote notary services?

Discussion questions: Users of notarized documents

6. Can you describe the ways in which you think your organization would be affected by remote notarization?
7. Are there limits to your ability to accept and use remotely notarized documents?
 - What would your organization need in order to accept documents that have been notarized remotely?
8. How sure do you have to be that the person acting as commissioner or notary is authorized to do so?
 - What evidence would you like to see to assure yourself of this for electronic documents?
9. Do you require your clients to get their notarized documents authenticated (i.e., by a government confirmation of the status of the notary) before sending them to you?

Appendix A: Additional questions

10. Have those you serve expressed a need for, or interest in, remote notarization? Since Covid19, or independently?

11. Rules for remote commissioning and notarization generally require that the notary and signatory must be in real-time two-way audio-visual contact. Should an audio-visual record of the remote notarization session be kept by the notary, and for how long?

Appendix B: Remote online notarization frameworks in select U.S. States

		Virginia (2012)	Montana (2015)	Texas (2017)	Michigan (2018)
Permitted remote notarial acts	Acknowledgements	✓	✓	✓	✓
	Taking oaths or affirmations	✓	✓	✓	✓
	Affidavits or depositions	✓	✓	✓	Not explicitly stated
	Certifying copies	✓	Not explicitly stated	✓	Not explicitly stated
Notarized Document Transmission	Simultaneous audio and visual transmission	✓	✓	✓	✓
	Transmission must be in real-time and recorded	✓	✓	✓	✓
	Transmission must be secure and ensure the integrity of records	✓	✓	✓	✓
Digital Certificate Requirements	Tamper-evident	✓	✓	✓	✓
	Public Key Information infrastructure	✓	Not publicly available	✓	✓
	X.509 compliant	✓	Not publicly available	✓	✓
	Digital certificate affixed directly to notarized document	✓	✓	✓	✓
Recordkeeping	Date, time and type of notarial act	✓	✓	✓	✓
	Description of the document or proceeding	✓	✓	✓	✓
	Name and address of each principal/signer	✓	✓	✓	✓
	Evidence of identity	✓	✓	✓	✓
	Document fee charged for the act	✓	✓	✓	✓
	Retain a copy of and/or reference to the A/V recording	✓	✓	✓	✓

Appendix C: Remote notarization frameworks enabled by Executive Order in Oregon and New York State

Requirement	Oregon	New York
Identity verification	<ul style="list-style-type: none"> The signer must present satisfactory ID verified through credential analysis and also pass a knowledge-based authentication test. The notary must visually compare the ID presented to confirm the signer matches the appearance of the photo on the presented ID, capture an image of the identification presented by the signer and confirm that the ID is in the signer’s possession at the time of the notarization. 	<ul style="list-style-type: none"> The person seeking the notary's services, if not personally known to the notary, must present valid photo ID to the notary during the video conference. The person must confirm that he or she is physically located in the State of New York.
Technical	<ul style="list-style-type: none"> Any Remote Online Notarization (RON) technology used must include reliable and continuous audio-video feeds that enable all parties to be clearly heard and understood. Each document completed as part of a remote notarization must be electronically signed and rendered tamper-evident. An audiovisual recording of the notarization must be made and retained as part of the electronic notary journal. 	<ul style="list-style-type: none"> The video conference must allow for direct interaction between the person and the notary.

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Requirement	Oregon	New York
Process	<ul style="list-style-type: none"> • An Oregon notary must first complete a required remote online notarization course and notify the Secretary of State’s office that they will be performing notarial acts for remotely located individuals. • Notaries may charge a maximum of \$25 for performing remote online notarization. • A remote online notarization may be recorded in an electronic notary journal provided by a RON technology vendor and retained for 10 years following the date of notarization. • Documents executed may not be recorded as part of the audiovisual recording of the notarization. 	<ul style="list-style-type: none"> • The person must transmit by fax or electronic means a legible copy of the signed document directly to the Notary on the same date it was signed. • The Notary must print and sign the document in ink and may not use an electronic signature to notarize the document. The signer may use an electronic signature but the Notary must witness the electronic signature. • Notaries must place their commission expiration date and county where they are commissioned on the document. • If the Notary receives the original document within 30 days following a remote notarization, the Notary may perform a physical notarization again for the document using the original date of the remote notarization. • The Department of State recommends keeping a Notary log of each remote notarization.

Appendix D: Resources

For additional information and context, please see the following resources:

- [*Notaries Act*](#)
- [*Commissioner for Taking Affidavits Act*](#)
- [*O. Reg 431/20: Administering Oath or Declaration Remotely*](#) under the *Commissioners for Taking Affidavits Act*
- The Ministry of the Attorney General's [*Guide for Newly Appointed Commissioners for Taking Affidavits*](#)