

**Chapter 700: RULES GOVERNING NOTARIES PUBLIC, NOTARIAL
OFFICERS, NOTARIAL ACTS AND THE PROCEDURES FOR
ELECTRONIC AND REMOTE NOTARIZATION**

SUMMARY: This rule replaces Chapter 700 and governs the appointment and commissioning of notaries public and establishes the standards and procedures for electronic and remote notarization by notarial officers.

SECTION 1: DEFINITIONS

1. **Credible witness.** “Credible witness” means an honest, reliable, and impartial person who personally knows an individual appearing before a notarial officer and takes an oath or affirmation before the notarial officer to vouch for that individual’s identity.
2. **Direct beneficial interest.** “Direct beneficial interest” for purposes of defining a conflict of interest under 4 M.R.S. § 1904(3)(B), means a fee other than the customary fee for performance of the notarial act, or any advantage, right, title, interest, cash, property or other consideration received in connection with the record.
3. **Electronic notarization.** “Electronic notarization” means a Maine notarial officer’s performance of a notarial act with respect to an electronic record, using an electronic signature and an electronic official stamp.
4. **Electronic record.** “Electronic record” means a record created, generated, sent, communicated, received, or stored by electronic means.
5. **Notarial officer.** “Notarial officer” means a notary public commissioned by the Secretary of State; a judge, justice, clerk or deputy clerk of a court of this State; or an attorney-at-law duly admitted and eligible to practice in the courts of this State; and any other individual authorized by the laws of this State to perform a specific notarial act.
6. **Principal.** “Principal” means a person whose signature is notarized, or a person other than a credible witness taking an oath or affirmation before a notarial officer.

7. **Remotely located individual.** “Remotely located individual” means an individual who is not in the physical presence of the notarial officer who is performing a notarial act and appears before the notarial officer using communication technology.
8. **Remote notarization.** “Remote notarization” means a notarial act performed in compliance with 4 M.R.S. Chapter 29, by a notarial officer for a remotely located individual using communication technology approved by the Secretary of State.
9. **Residence and resident.** “Residence” for purposes of this rule means the place where the individual has established a fixed and principal home to which the individual, whenever absent, intends to return. “Resident” means having a place where the individual has established a fixed and principal home to which the individual, whenever absent, intends to return.
10. **Secretary of State.** “Secretary of State” as used in this rule includes the Secretary of State, Deputy Secretary of State for Corporations, Elections and Commissions, and the Division Director and staff of the Division of Corporations, UCC & Commissions within the Department of the Secretary of State.
11. **Tamper-evident.** “Tamper-evident” means that any change to a record displays evidence of the change.
12. **Tamper-evident technology.** “Tamper-evident technology” means a set of applications, programs, hardware, software, or other technologies designed to enable a notarial officer to perform notarial acts with respect to electronic records or for remotely located individuals which display evidence of any changes made to an electronic record.

SECTION 2: APPOINTMENT OF NOTARY PUBLIC

1. Criteria for appointment as a notary public

To qualify for appointment as a notary public, the applicant must meet the following criteria:

- A. **Age eligibility.** An applicant must be at least 18 years of age at the time of submitting the application;
- B. **Residency or place of employment or business in Maine.** An applicant must demonstrate:

- (1) Is a Maine resident; or
- (2) Has a place of employment located in Maine; or
- (3) Has a business located in Maine;

C. **Language proficiency.** An applicant must demonstrate an ability to read and write the English language;

D. **Trustworthiness.** An applicant must be worthy of the public trust. This means, at a minimum, that the applicant must:

- (1) Not have been convicted of any crime punishable by one year or more of imprisonment;
- (2) Not have been convicted of any crime involving fraud, dishonesty or deceit;
- (3) Not have received a finding or have made any admission of liability in any legal proceeding or disciplinary action against the applicant based on the applicant's fraud, dishonesty or deceit;
- (4) Not have made any false, fraudulent, dishonest or deceitful statements in the application for a notary commission; and
- (5) Not have had a notary public commission in another state revoked, suspended, conditioned, or not renewed for cause.

A crime involving fraud, dishonesty or deceit includes, but is not limited to, any crime involving false swearing, unsworn falsification, perjury, tampering with public records, impersonation, bribery, forgery, identity theft, negotiating a worthless instrument, misuse of information, theft, larceny, robbery, extortion, counterfeiting, unauthorized transfer of property, misappropriation, embezzlement, and deceptive practices; and

E. **Examination.** An applicant must pass an examination administered by the Secretary of State to demonstrate an understanding of the laws, rules, procedures and ethics relevant to performing notarial acts. The examination will be administered by the Secretary of State and based on a course of study offered regularly by the Secretary of State in accordance with 4 M.R.S. § 1923.

2. **Application process.**

- A. **Application.** The applicant for a notary public commission must file an application using the latest form issued by the Secretary of State, which must require submission of the following information, at a minimum:
- (1) The applicant's legal name;
 - (2) The applicant's date of birth;
 - (3) The applicant's residence address;
 - (4) The applicant's mailing address, if different from the physical residence address;
 - (5) The applicant's email address and contact telephone number;
 - (6) A list of any crimes punishable by one year or more of imprisonment for which the applicant has been convicted in Maine or in any other jurisdiction;
 - (7) A list of any crimes involving fraud, dishonesty or deceit for which the applicant has been convicted in Maine or in any other jurisdiction;
 - (8) Disclosure of any legal proceedings in any jurisdiction that resulted in findings against the applicant or admissions of liability by the applicant;
 - (9) If the applicant is not a resident of Maine but is eligible to apply based on having a place of employment in Maine, the application must include the address of the applicant's place of employment and a signed statement by the applicant's employer verifying the applicant's employment status;
 - (10) If the applicant is not a resident of Maine but is eligible to apply based on having a business in Maine, the application must include the legal name, and the physical and mailing addresses of that business; and
 - (11) A declaration signed by the applicant that all information provided in the application is true and correct.

B. Additional information required for electronic or remote notarization.

- (1) **Notice of intent to perform electronic notarization.** If the applicant intends to perform notarial acts with respect to electronic records using an electronic signature, the applicant must submit the notice form prescribed by the Secretary of State that contains the information required by section 5, subsection 6 of this rule pertaining to electronic notarization.
- (2) **Notice of intent to perform remote notarization.** If the applicant intends to perform notarial acts for remotely located individuals, the applicant must submit the notice form prescribed by the Secretary of State that contains the information required by section 6, subsection 8 of this rule pertaining to remote notarization.

C. Application Fee. Every application for a notary public commission must be accompanied by payment of a fee prescribed by 5 M.R.S. § 87, submitted to the Secretary of State and made payable to the Treasurer, State of Maine.

3. Term of appointment

If the Secretary of State determines that the applicant has satisfied all the criteria for appointment, the Secretary shall issue a notary public commission to the applicant for a term of 7 years from the date of issuance.

4. Issuance of certificate and qualifications

A. Process of Qualifying. Upon approval of an application, a certificate of commission will be mailed to the applicant who then has 30 calendar days to appear before a Dedimus Justice to take the oath prescribed by 4 M.R.S. § 1922(3), and 45 calendar days from the date of appointment to return the completed certificate of qualification to the Secretary of State. If the Secretary of State does not receive the certificate within the 45 calendar days or the certificate demonstrates that the applicant was not sworn into office within 30 calendar days of appointment, the Secretary will notify the applicant of the failure to qualify. From the date of that notice, the applicant has 90 calendar days to request a reappointment by the Secretary of State. From the date of reappointment, the applicant has 30 calendar days to be sworn into office by a Dedimus Justice. If the applicant does not request reappointment within 90 calendar days from the date of notification of a failure to qualify, the applicant must reapply in order to be appointed as a notary public.

- B. **Authority to perform electronic or remote notarial acts.** A notary public who has been issued a commission is not authorized to perform electronic or remote notarizations unless and until a notice meeting all the requirements described in section 5, subsection 6, and section 6, subsection 8 of this rule has been submitted to the Secretary of State and accepted in accordance with 4 M.R.S. Chapter 39 and this rule.
- C. **Authority to solemnize marriages.** A notary public who has been issued a commission by the Secretary of State is not authorized to solemnize marriages in Maine unless the notary has also been issued a marriage officiant license by the Secretary of State pursuant to 5 M.R.S. § 90-G and Chapter 720, Rules Governing the Licensing of Marriage Officiants Who Are Authorized to Solemnize Marriages in Maine.

5. **Change of information or status of commissioned notary public**

- A. Within 30 calendar days of the occurrence of any of the following changes to the notary's status or information previously submitted, a notary public must submit written notice to the Secretary of State regarding the change(s) in a manner prescribed by the Secretary:
 - (1) A change of the notary's name by court order or marriage;
 - (2) A change of the notary's residence or mailing address;
 - (3) A change of the notary's email address or telephone number;
 - (4) A change in the notary's place of employment if the notary's eligibility for a commission was based on having a place of employment in Maine;
 - (5) A change in the location of the notary's business if the notary's eligibility for a commission was based on having a business in Maine;
 - (6) A change to the information previously submitted in writing notifying the Secretary of State that the notary public will be performing notarial acts with respect to electronic records or remotely located individuals;
 - (7) A conviction of a crime punishable by one year or more of imprisonment or of a crime involving fraud, dishonesty or deceit, as described in section 2, subsection 1, paragraph D of this rule; or

(8) A finding against, or admission of liability by, the notary in any legal proceeding or disciplinary action based on the applicant's or notary's fraud, dishonesty or deceit.

B. **Effect of name change.** A notary public who notifies the Secretary of State of a name change as required by section 2, subsection 5, paragraph A of this rule shall use the new name in performing notarial acts only after:

(1) The notary has delivered the notice required by section 2, subsection 5, paragraph A of this rule;

(2) The new name has been updated in the Secretary of State's notary public database; and

(3) The notary, if using a stamping device or official stamp, has made the change to their device bearing the new name.

C. **Issuance of amended commission.** An amended certificate of commission will be issued by the Secretary of State upon receipt of notice of a name change or change of residence to a new municipality by the notary.

D. **Resignation.** A notary public may resign their commission at any time by submitting written notice to the Secretary of State of the intent to resign. The resignation shall be deemed effective as of the date of the written notice. Upon resignation, a notary public shall return their certificate of commission to the Secretary of State.

E. **Fees for notarial services.** Any fee to be charged by a commissioned notary public for performing a notarial act must be disclosed in writing to the individual requesting the services of the notary public before the notarial act is performed. The notary public must obtain the individual's consent to any fee to be charged prior to performing the notarial act.

SECTION 3: RENEWAL OF NOTARY PUBLIC COMMISSION

1. **Notice of expiration.** The Secretary of State shall send written notification to a notary public, no less than 30 calendar days prior to the expiration of the notary's commission. Notice will be sent to the email address recorded on the Secretary of State's database. If the notary public does not have an email address, the notice will be sent by U.S. Postal Service, regular first-class mail. Failure to receive the notice does not delay or suspend the expiration of the commission.

2. **Application for renewal.** An application for renewal of a notary public commission must include the following information:
 - A. The name under which the current notary public commission was issued;
 - B. The legal name of the notary public seeking renewal of the commission (if changed since issuance of the commission that is expiring);
 - C. The date of expiration of the commission;
 - D. The physical address of the applicant's residence and the applicant's mailing address;
 - E. The applicant's email address and contact telephone number;
 - F. The physical address of a place of employment or location of the notary public's business in Maine if the notary is not a resident of Maine;
 - G. A list of any crimes for which the notary public has been convicted since the date of issuance of the commission that is expiring;
 - H. Disclosure of any legal proceedings in any jurisdiction that resulted in findings against the applicant or admissions of liability by the applicant; and
 - I. A declaration signed by the notary that all information provided in the application is true and correct.
3. **Deadline for filing.** If the notary fails to file a renewal application before the expiration date of the current commission, the notary public is not authorized to perform any notarial acts until the commission has been renewed or a new commission has been issued and the applicant has taken the oath of office before a Dedimus Justice. If the application for renewal is not received by the Secretary of State within 90 calendar days after the expiration date of the commission, the notary public must apply for a new commission.
4. **Examination.** An applicant for renewal must pass an examination administered by the Secretary of State to demonstrate an understanding of the laws, rules, procedures and ethics relevant to performing notarial acts.
5. **Application Fee.** Every application for renewal of a notary public commission, or a new commission, must be accompanied by payment of a fee prescribed by 5 M.R.S. § 87, submitted to the Secretary of State and made payable to the Treasurer, State of Maine.

SECTION 4: DENIAL, NON-RENEWAL, SUSPENSION OR REVOCATION OF A NOTARY PUBLIC COMMISSION; COMPLAINTS

1. **Complaints.** A person may file a complaint with the Secretary of State regarding the performance of a notary public. The complaint should include the complainant's contact information and a detailed statement describing the basis for the complaint and attaching any relevant records.
2. **Investigation.** The Secretary of State may, on its own initiative or in response to a complaint, make such investigation as it determines to be reasonable and necessary to determine whether a person has violated, is violating or is about to violate any provision of 4 M.R.S chapter 39 or this rule. The Secretary of State may require the filing of statements by the alleged violator or others with knowledge of the allegations and require production of records that the Secretary of State deems relevant to the investigation.
3. **Denial, non-renewal, suspension, revocation or imposition of conditions on a notary public commission.**
 - A. **Grounds.** The Secretary of State may deny, refuse to renew, suspend, revoke or impose a condition on the commission of a notary public for any act or omission that demonstrates the individual lacks the competence, reliability, or integrity to act as a notary public, including any of the following:
 - (1) **Conflicts of interest.** Performance of a notarial act with regard to which the notary has a conflict of interest as defined in 4 M.R.S. § 1904 (3), or performing an acknowledgment prohibited pursuant to 4 M.R.S. § 1904(4);
 - (2) **Prohibited acts.** Performance of a notarial act prohibited by 4 M.R.S. § 1904, subsection 5, or section 1915, subsection 16 or 17, or any acts prohibited by 4 M.R.S. § 1926;
 - (3) **Change of name without notice.** Performance of a notarial act using a different name than the name on the notary commission without having notified the Secretary of State of the name change.
 - (4) **Fraud, deceit or dishonesty.** Committing an act of fraud, deceit or dishonesty;
 - (5) **Criminal convictions.** Conviction of a crime punishable by one year or more of imprisonment or a crime involving fraud, dishonesty or deceit;

- (6) **False or misleading advertising.** Use of false or misleading advertising or otherwise engaging in a method, act, or practice that is unfair or deceptive, including any untrue or misleading statement or omission of a material fact relating to a duty or responsibility of a notary public;
 - (7) **False or misleading statements in notary application.** An untrue or misleading statement or omission of a material fact in any application or filing with the Secretary of State required by law;
 - (8) **Noncompliance with information requests.** Failure to comply with any reasonable information request made by the Secretary of State for the purpose of evaluating the notary's status or application for a commission or renewal of a commission or any request by the Secretary of State for production of records under section 4 subsection 2; or
 - (9) **Failure to comply with notary statute and rules.** Failure to comply with any other provision of 4 M.R.S. chapter 39 or this rule.
- B. **Right to a hearing.** If the Secretary of State denies an application for a notary public commission, imposes a condition on a commission, refuses to renew, suspends, or revokes a notary public commission, the applicant or notary public has a right to a hearing in accordance with the Maine Administrative Procedure Act, 5 M.R.S. chapter 375, subchapter 4. The applicant or notary public must be notified in writing of the action taken by the Secretary and of their right to a hearing.
- C. **Decision by Secretary of State.** After hearing, the Secretary shall issue a written decision which may be appealed to Superior Court pursuant to 5 M.R.S. chapter 375, subchapter 7.

SECTION 5: ELECTRONIC NOTARIZATION

1. Provider application for approval of technology for electronic notarization

A provider of technology to be used for electronic notarization may request approval from the Secretary of State by submitting an application that contains the following information:

- A. A certification that the provider's technology is designed to ensure that notarial acts performed by notarial officers with respect to electronic records using electronic signatures will comply with the requirements of 4 M.R.S. chapter 39 and this rule;

- B. A certification that the provider is currently registered to do business in Maine and is in good standing with the Secretary of State;
- C. A list of all jurisdictions in which the provider's technology has been approved for the performance of electronic notarization, and the month and year in which the provider received the most recent approval from each jurisdiction;
- D. Disclosure of any complaints, official warnings, or disciplinary actions taken against the provider in any jurisdiction;
- E. Any pending, threatened or adjudicated legal actions against the provider relating in any way to the performance of electronic notarial acts using the provider's technology in any jurisdiction;
- F. The name and contact information of a representative of the applicant with knowledge of the provider's technology and with authority to make binding representations; and
- G. Any other information sufficient to demonstrate that the provider's technology meets or exceeds the standards set forth in subsection 2 below.
- H. The provider must submit the application fee to the Secretary of State, made payable to Treasurer, State of Maine, prescribed by 5 M.R.S. § 86.

2. **Criteria and standards for technology used for electronic notarization**

To obtain approval, a technology provider must demonstrate that the technology to be used for electronic notarization in this State:

- A. Restricts access to the provider's technology only to notarial officers whose written notice to the Secretary of State of their intent to perform electronic notarization has been accepted, in accordance with the requirements of this rule;
- B. Requires a password or other secure means of authentication to access the provider's technology;
- C. Requires a notarial officer to present a valid Maine notary commission or other evidence of the notarial officer's qualification to perform notarial acts prior to receiving an authorized digital or electronic stamp and signature;

- D. Includes a method to ensure that a notarial officer enrolled to use the technology has been trained and has the requisite knowledge to use it to perform notarial acts in compliance with 4 M.R.S. chapter 39 and this rule;
- E. Enables a notarial officer to retain their authorized digital or electronic signature under the notarial officer's sole control and to affix their electronic signature in a manner that attributes the signature to the notarial officer, is capable of independent verification, and is tamper-evident;
- F. Enables a notarial officer to attach or logically associate a certificate of notarial act to the electronic record in a tamper-evident manner; and
- G. Uses tamper-evident technology sufficient to ensure that the electronic signature on an electronic record is authentic.

3. **Approval process**

Upon review of an application from a technology provider, the Secretary of State may:

- A. Return the application as incomplete with a written notice of the deficiencies;
- B. Require the applicant to supplement the application with additional explanations, information or evidence of its ability to ensure compliance with state law;
- C. Deny the application; or
- D. Approve the application with or without conditions.

If the Secretary determines upon review of a completed application that the provider has met the standards set forth in this rule and in 4 M.R.S. chapter 39, the Secretary shall notify the provider of its approval and add the name of the provider to the list of providers of technology approved for electronic notarizations. The Secretary of State's approval is valid for one year from the date of issuance and may be renewed in accordance with section 5, subsection 4, paragraph D of this rule.

4. **Ongoing obligations of providers of technology for electronic notarization**

- A. **Notice regarding users of the technology.** The provider must notify the Secretary of State within 5 business days when any notary public commissioned by the Secretary of State or other notarial officer in Maine

has been accepted or approved to use the provider's technology to perform electronic notarizations in the State.

- B. **Suspension or termination.** The provider must suspend or terminate access to its electronic notarization technology for any notary public whose commission has been suspended or revoked by the Secretary of State or whose commission has expired, within 5 business days of being notified by the Secretary of State or the notary public of such action.
 - C. **Binding representations; notification of material changes.** All representations, promises and assurances of performance made by a provider or its authorized representative to the Secretary of State are binding on the provider. If facts or circumstances change such that any material statement, representation or explanation made by the provider in its application for approval is no longer accurate or complete, the provider must inform the Secretary of State of the change, explain the reasons for the change and provide evidence sufficient to demonstrate that the technology for use in electronic notarization remains in compliance with the standards set forth in this rule. If, upon review of the new information, the Secretary determines that the technology no longer meets the standards set forth in this rule, the Secretary may suspend or terminate approval in accordance with section 5, subsection 5 of this rule.
 - D. **Annual renewal.** The technology provider must file a renewal application on or before the expiration of the Secretary's initial approval and each year thereafter on a form prescribed by the Secretary of State. The application must be accompanied by payment of the application fee prescribed by 5 M.R.S. § 86.
 - E. **Notice of security breach.** If a provider of technology for electronic notarizations becomes aware of a possible security breach involving its data, the provider must give written notice to the Secretary of State and to each notarial officer using the provider's services for electronic notarizations. Such notice must be provided as expeditiously as possible and no later than 15 business days after the date on which the provider has determined that the security breach occurred. The notice must include the steps the provider has taken or will take to mitigate the breach as well as a general description of the data that was or is reasonably believed to have been compromised.
5. **Denial, non-renewal, suspension, termination or revocation of approval for a technology provider; complaints**
- A. **Complaints.** A notarial officer or other person using or relying upon an electronic notarization technology may file a complaint with the Secretary of State if they believe the technology provided does not comply with the

standards set forth in 4 M.R.S. chapter 39 or this rule. The complaint must include the complainant's contact information and a detailed statement describing the basis for the complaint and attaching any relevant records.

B. Investigation. The Secretary of State may, on its own initiative or in response to a complaint, make such investigation as it determines to be reasonable and necessary to determine whether a technology provider has violated, is violating or is about to violate any provision of 4 M.R.S. chapter 39 or this rule. The Secretary of State may require the filing of statements by the provider or others with knowledge of the allegations and require production of records that the Secretary of State deems relevant to the investigation.

C. Grounds for denial, non-renewal, suspension, termination or revocation of approval. The Secretary may deny, refuse to renew, suspend, terminate or revoke approval of a provider of technology used for electronic notarization in the State if the Secretary of State determines that the technology provider:

- (1) has violated 4 M.R.S. chapter 39 or this rule;
- (2) has made a false or misleading statement or omission of material fact to the Secretary of State;
- (3) has failed to carry out its obligations in accordance with section 5, subsection 4 of this rule;
- (4) has been subject to administrative or judicial action involving a violation of laws pertaining to electronic notarization in any other jurisdiction;
- (5) is no longer authorized to do business in the State or is not in good standing with the Secretary of State; or
- (6) is no longer able to meet its obligations and ensure compliance with 4 M.R.S. chapter 39 or this rule;
- (7) Has failed to cooperate with any investigation pursuant section 5, subsection 5, paragraph B of this rule.

D. Procedure

Prior to taking any action described in section 5, subsection 5, paragraph C of this rule, the Secretary of State must provide written notice of the proposed action to the provider and offer the provider an opportunity to respond in writing within 30 business days. The Secretary of State shall review the information submitted by the provider and issue a final

decision, which shall be appealable to Superior Court pursuant to 5 M.R.S. chapter 375, subchapter 7.

Upon the Secretary of State's denial, non-renewal, suspension, termination or revocation of the technology provider's approval, the provider shall not deny any notarial officer registered with the provider access to the notarial officer's electronic signature, official seal and records stored by the technology provider on behalf of the notarial officer.

6. **Notice by Notarial Officer of intent to perform electronic notarization**

A. **Contents of notice.** Before performing a notarial act with respect to an electronic document or using an electronic signature for the first time, a notarial officer must notify the Secretary of State by providing the following information in a format prescribed by the Secretary of State:

- (1) The name(s) of the provider(s) of technology approved by the Secretary of State that the notarial officer intends to use in attaching or logically associating an electronic notarial signature, stamp and certificate to an electronic record;
- (2) Certification from each provider of technology the notarial officer intends to use, confirming that the notarial officer has received training in the use of that technology for electronic notarization and has been approved as a user of that technology;
- (3) A certification by the notarial officer that the officer has read and understands the requirements of 4 M.R.S. chapter 39 and this rule regarding electronic notarization; and
- (4) An example of the notarial officer's electronic signature and official electronic stamp.

If the notice is deemed insufficient by the Secretary of State, the notarial officer shall be notified of the deficiencies and shall have the opportunity to resubmit it. The notice is not valid until it is accepted as complete by the Secretary of State.

B. **Authority to perform electronic notarization.** In addition to submitting the notice described in section 5, subsection 6, paragraph A of this rule and accepted by the Secretary of State, a notary public who wishes to perform electronic notarizations must have a valid notary public commission, and an attorney-at-law must be duly admitted and eligible to practice law in the courts of this State.

- C. **Amending the notice.** After submitting written notice under section 5, subsection 6 of this rule to the Secretary of State, a notarial officer must amend the notice to include any change in the technology providers including but not limited to identifying any new or additional technology providers. Such amended notice must be submitted to the Secretary of State within ten 10 business days of making the change.
- D. **Termination of authority.** A notarial officer's authority to perform electronic notarizations automatically expires upon the occurrence of any of the following:
 - (1) The notarial officer is a notary public and the notary public's commission expires, is revoked, suspended or terminated by the Secretary of State;
 - (2) The notarial officer is a notary public and the notary public resigns their commission;
 - (3) The notarial officer is a notary public and the notary public no longer has a place of employment, a business or residence in this State;
 - (4) The notarial officer is an attorney, upon suspension or termination of that attorney's authority to practice law in this State; or
 - (5) The Secretary of State has revoked or terminated approval of the technology provider whose technology the notarial officer is using to perform electronic notarization unless the notarial officer is approved to use another technology provider.

7. Requirements for performing electronic notarization

- A. **Procedure.** When performing a notarial act with respect to electronic records, or affixing an electronic signature, the notarial officer must:
 - (1) Require the principal to appear in person before the notarial officer at the time of the electronic notarization if the principal is making a statement or executing a signature on a record, pursuant to 4 M.R.S. § 1906;
 - (2) Identify the principal who is physically present in accordance with 4 M.R.S. § 1907;
 - (3) Verify that the principal has adopted an electronic signature that complies with 10 M.R.S. chapter 1051, if the record is to be signed electronically;

- (4) Complete an electronic notarial certificate and attach it to or logically associate it with the notarial officer's electronic signature and official stamp in a tamper-evident manner and
- (5) Use an electronic signature in combination with the electronic notary stamp only for the purpose of performing electronic notarizations.

B. **Journal required.** A notarial officer must maintain a journal in which all electronic notarizations are recorded. Entries in the journal must be made contemporaneously with the notarial act and must comply with all the requirements set forth in 4 M.R.S. § 1920 (2) and (3).

SECTION 6. REMOTE NOTARIZATION

1. **Provider application for approval of communication technology and identity proofing to be used in remote notarization**

A provider of communication technology to be used for remote notarization may request approval from the Secretary of State by submitting an application on a form provided by the Secretary of State that contains the following information:

- A. A certification that the provider's communication technology is designed to ensure that remote notarizations using the provider's technology will comply with the requirements of 4 M.R.S. chapter 39 and this rule;
- B. A certification that the provider is currently registered to do business in Maine and is in good standing with the Secretary of State;
- C. A list of all jurisdictions in which the provider's communication technology has been approved for the performance of notarial acts remotely, and the month and year in which the provider received its most recent approval;
- D. Disclosure of any complaints, official warnings, or disciplinary actions taken against the provider in any jurisdiction;
- E. Any pending, threatened or adjudicated legal actions against the provider relating in any way to the performance of notarial acts using the provider's communication technology in any jurisdiction;
- F. The name and contact information of a representative of the applicant with knowledge of the provider's communication technology and with authority to make binding representations; and

- G. Any other information sufficient to demonstrate that the provider's communication technology and identity proofing methods meet or exceed the criteria and standards set forth in section 6, subsection 2 of this rule.
- H. The provider must submit the application fee to the Secretary of State, made payable to Treasurer, State of Maine, prescribed by 5 M.R.S. § 86.

2. **Criteria and standards for communication technology and identity proofing used for remote notarization**

To obtain approval, a provider must demonstrate that the communication technology to be used for remote notarization in this state:

- A. Restricts access to notarial officers whose written notice to the Secretary of State of intent to perform remote notarization has been accepted, in accordance with the requirements of this rule;
- B. Requires a password or other secure means of authentication to access the provider's technology;
- C. Requires a notarial officer to present a valid Maine notary public commission or other evidence of the notarial officer's qualification to perform notarial acts in order to access or utilize the communication technology to perform remote notarizations;
- D. Includes a method to ensure that a notarial officer enrolled to use the technology has the requisite knowledge to use it to perform notarial acts in compliance with 4 M.R.S. chapter 39 and this rule;
- E. Enables a notarial officer to verify the identity of the principal and any required witness in compliance with 4 M.R.S. chapter 39 and this rule;
- F. For remote notarization of electronic records, enables a notarial officer to affix their electronic signature to an electronic notarial certificate in a manner that attributes the signature to the notarial officer and is tamper-evident;
- G. For remote notarization of electronic records, enables a notarial officer to attach or logically associate a certificate of notarial act to the electronic record in a tamper-evident manner;
- H. Provides continuous, synchronous audio-visual feeds that allow the remotely located individual and the notarial officer to see and speak to one another simultaneously through live, real time transmission;
- I. Captures images with sufficient resolution to enable analysis of the remote individual's credentials;

- J. Includes at least two (2) of the following methods of identity proofing:
 - (1) A credential that is validated by a government or third party;
 - (2) A biometric identifier, including a retina or iris scan, fingerprint, voiceprint, scan of hand or face geometry, or any other physiological, biological or behavioral characteristic used to identify an individual;
 - (3) A public key certificate; or
 - (4) An identity assessment based on a set of questions formulated from public or private data sources for which the principal has not provided a prior answer;
- K. For remote notarization of electronic records, provides a secure method of document upload and transfer;
- L. Records the audio-visual communication in real time and associates that recording with the notarial officer's electronic record;
- M. Provides reasonable security measures to prevent unauthorized access to:
 - (1) The live communication between the notarial officer and the remotely located individual;
 - (2) The recording of the audio-visual communication;
 - (3) The verification methods and credentials used to verify the identity of the remotely located individual; and
 - (4) Electronic records presented for remote notarization, if applicable;
- N. Is capable of securely creating, storing, accessing and reproducing a copy of an electronic recording of the remote notarial act. and
- O. For remote notarization of electronic records, provides an electronic verification or audit trail of the electronically notarized document that is accessible to all parties involved in a notarial act that is performed remotely.

3. Approval process for communication technology providers

The process for review and approval of applications by communication technology providers is the same as described in section 5, subsection 3 of this rule for providers of electronic notarization technology.

4. Ongoing obligations of communication technology providers

Providers of communication technology for remote notarization have the same ongoing obligations as those specified in section 5, subsection 4 of this rule for providers of technology for electronic notarization.

5. **Denial, non-renewal, suspension, termination or revocation of approval for a communication technology provider**

The filing of complaints, handling of investigations, and the grounds upon which the Secretary of State may deny, refuse to renew, suspend, terminate, or revoke approval of a provider of communication technology for remote notarization in the State are the same as described in section 5, subsection 5 of this rule for providers of technology for electronic notarization.

After the Secretary of State's denial, non-renewal, suspension, termination or revocation of a technology provider's approval, the provider shall not deny any notarial officer registered with the provider access to the notarial officer's electronic signature, official seal and records stored by the technology provider on behalf of the notarial officer.

6. **Service of process fee**

By making its communication technology or identity proofing available for use in remote notarization in this State, and by providing storage for audio-visual recordings of remote notarizations, a technology provider appoints the Secretary of State as the provider's agent for service of process in any civil action in this State related to a remote notarization pursuant to 4 M.R.S. § 1915(15). The fee for the Secretary of State to accept service of process shall be twenty dollars (\$20).

7. **Notice by Notarial Officer of intent to perform remote notarization**

A. **Contents of notice.** Before performing a remote notarization for the first time, a notarial officer must submit written notice to the Secretary of State in a format prescribed by the Secretary of State and must include the following information:

- (1) The name of the provider(s) of communication technology approved by the Secretary of State that the notarial officer intends to use for remote notarization;
- (2) Certification from the communication technology provider the notarial officer intends to use, confirming that the notarial officer has received training on the use of that technology for remote notarization and has been approved as a user of that technology; and
- (3) A declaration by the notarial officer that the officer has read and understands the requirements of 4 M.R.S. chapter 39 and this rule regarding remote notarization.

If the notice is deemed incomplete by the Secretary of State, the notarial officer shall be notified of the deficiencies and have the opportunity to resubmit it. The notice is not valid until it is accepted by the Secretary of State.

- B. **Authority to perform remote notarization.** In addition to submitting written notice to the Secretary of State in accordance with section 6, subsection 8, paragraph A of this rule and accepted by the Secretary of State, a notary public applying to perform remote notarizations must have a valid notary public commission, and an attorney-at-law must be duly admitted and eligible to practice law in the courts of this state.
- C. **Amending the notice.** After submitting written notice under section 6, subsection 8, paragraph A to the Secretary of State, a notarial officer must amend the notice to include any change in communication technology providers, including but not limited to identifying any new or additional technology providers. Such amended notice must be submitted to the Secretary of State within 10 business days of making the change.
- D. **Termination of authority.** The notarial officer's authority to perform remote notarizations automatically expires upon the occurrence of any of the following:
 - (1) The notarial officer is a notary public and the notary public's commission expires, is revoked, suspended or terminated by the Secretary of State;
 - (2) The notarial officer is a notary public and the notary public resigns their commission;
 - (3) The notarial officer is a notary public and the notary public is no longer a Maine resident and no longer has a place of employment or a business in this State;
 - (4) The notarial officer is no longer authorized to perform notarial acts pursuant to 4 M.R.S. § 1910; or
 - (5) The Secretary of State revokes or terminates approval of the technology provider whose technology the notarial officer is using to perform remote notarization unless the notarial officer is approved to use another technology provider.
- E. **Exemptions.** The requirements for remote notarization in this rule do not apply to a judge, justice, clerk or deputy clerk of any court in Maine who is performing a notarial act for a remotely located individual in the course of performing exclusively judicial functions pursuant to statute, or rules or administrative orders adopted by the Maine Supreme Judicial Court. The

requirements for remote notarization in this rule also do not apply to a court reporter in Maine administering the oath to a witness in a deposition conducted pursuant to the rules of procedure adopted by the Maine Supreme Judicial Court or the federal courts.

8. **Requirements for performing remote notarization**

A. **General procedure.** When performing a remote notarization, the notarial officer must:

- (1) Use a device with a camera and microphone and ensure that the remotely located individual is also using a device with a camera and microphone so that real-time audiovisual communication is occurring;
- (2) Use only a communication technology provider and identity proofing method approved by the Secretary of State and identified in the notice provided by the notarial officer to the Secretary of State;
- (3) Proceed with the remote notarization only if the notarial officer determines that they have a reliable internet connection with the remotely located individual to enable the notarial officer to perform the remote notarization in compliance with 4 M.R.S. Chapter 39 and these rules;
- (4) Recite information sufficient to identify the notarial officer, the officer's authority to act, the type of notarial act to be performed, the name of the remotely located individual for whom the notarial act is being performed, and the date, time, and location of the notarial act at the commencement of the notarial proceeding;
- (5) Reasonably identify the remotely located individual by one or more of the following methods:
 - (a) The notarial officer's personal knowledge of the remotely located individual through dealings sufficient to provide reasonable certainty that the individual is the person they claim to be;
 - (b) Satisfactory evidence of the remotely located individual's identity provided by using at least 2 different types of identity proofing as described in this rule; and

- (c) By verification on oath or affirmation of a credible witness appearing before the notarial officer who is known to the officer or whom the officer can identify using at least 2 different types of identity proofing as described in this rule;
- (6) Cease the remote notarization procedure and restart it from the beginning if:
 - (a) the remotely located individual, any required witness or the notarial officer exits or disconnects from the communication technology before completion of the notarial act;
 - (b) the audio or visual feed is interrupted or terminated for any reason; or
 - (c) the notarial officer believes the process has been compromised and cannot be completed in accordance with applicable legal requirements;
- (7) Create an audiovisual recording of the remote notarization, including in the recording the statements required in section 6, subsection 9, paragraph A, subparagraph 4 of this rule, a statement by the notarial officer explaining the methods by which the officer has identified the remotely located individual for whom the notarial act is being performed pursuant to section 6, subsection 9, paragraph A, subparagraph 5 of this rule, and, with respect to a tangible record not physically present before the notarial officer, record the individual signing the record and the written declaration required pursuant to 4 M.R.S. § 1915(5);

B. **Acknowledgment of a tangible record.** When a notarial act involves taking an acknowledgment of a remotely located individual's signature on a tangible record, the notarial officer must adhere to the following procedures:

- (1) If the tangible record is physically present before the notarial officer, the officer must display the record to the remotely located individual and have the individual identify the record during the audiovisual recording;
- (2) If the tangible record is not physically present before the notarial officer, the remotely located individual must make the declaration described in 4 M.R.S. § 1915(5); and

- (3) If the remotely located individual is located outside the territorial boundaries of the United States, the record may be acknowledged only if it meets the requirements of 4 M.R.S. §1915(3)(D).

Any tangible record signed and notarized remotely must include a statement that the notarial act was performed remotely using communication technology approved by the Secretary of State.

- C. **Administration of an oath.** The notarial officer may administer an oath or affirmation to a remotely located individual in accordance with 4 M.R.S. § 1915(8).
- D. **Retention of recording.** The audiovisual recording of the remote notarization required under section 6 of this rule must be retained for a period of at least 10 years.
- E. **Notarial certificate for electronic record.** If a remote notarization involves an electronic record, a notarial certificate must be attached to or logically associated with that electronic record in a tamper-evident manner in accordance with 4 M.R.S. § 1916(6).
- F. **Journal required.** The notarial officer must record each remote notarization in the notarial officer’s journal, which must be retained under the notarial officer’s sole control. A journal in an electronic format must be tamper-evident, backed up in a secure manner, and only accessible through the use of passwords or other secure means of authentication under the control of the notarial officer.

SECTION 7: REQUIREMENTS FOR OFFICIAL NOTARY PUBLIC STAMP

When a notary stamp is to be used by a notary public commissioned by the Secretary of State, the stamp must be a rectangular or circular stamp and contain the notary public’s name as it appears on their commission, the words “Notary Public” and “State of Maine” or “Maine” and the commission expiration date. The stamp must be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated, pursuant to 4 M.R.S. § 1918(2).

SECTION 8: CERTIFIED COPIES

A notarial officer is not authorized to make any certified or attested copies of public records or vital records. A notarial officer may not certify a copy of any document that states on its face that it is illegal to make copies of the document.

SECTION 9: PROTESTS OF NEGOTIABLE INSTRUMENTS

A notarial officer shall not make or note a protest of a negotiable instrument unless the notarial officer is an employee of a financial institution acting in the course and scope of the notarial officer's employment with the financial institution.

STATUTORY AUTHORITY:

Title 4 Section 1928; Title 4 Section 1915(13) (Revised Uniform Law on Notarial Acts)

EFFECTIVE DATE:

July 5, 2023 – filing 2023-101 (*Emergency*)

October 2, 2023 – filing 2023-184