

COVID-19: NEW ENGLAND STATES EMBRACE REMOTE NOTARIZATION AS CONNECTICUT, MAINE, NEW HAMPSHIRE, RHODE ISLAND, AND VERMONT TEMPORARILY ELIMINATE "IN-PERSON" REQUIREMENTS

Date: 10 April 2020

U.S. Complex Commercial Litigation & Disputes and Investment Management Alert

By: Lindsay Sampson Bishop, Abigail P. Hemnes, Christopher J. Valente, R. N. Perkins

Among the dilemmas facing companies trying to conduct business through the COVID-19 crisis is the question of how to notarize documents while complying with social-distancing guidelines. As offices adapt to remote work and businesses are ordered to reduce person-to-person contact wherever possible, documents must still be notarized for many traditional commercial activities to continue. In response to COVID-19 and related governmental actions, some states are temporarily easing their notarization requirements to permit remote notarization through the use of videoconferencing technology. Consequently, individuals seeking to have a document notarized no longer need to appear in person before a notary in these states for the duration of the COVID-19 crisis.

Prior to the COVID-19 outbreak, no New England state permitted its notaries to conduct remote notarization.¹ However, as of the date of publication, Connecticut, Maine, New Hampshire, Rhode Island, and Vermont have all temporarily allowed remote notarization in response to COVID-19.²

CONNECTICUT

Effective through June 23, 2020, Connecticut notaries are permitted to notarize documents remotely through the use of two-way videoconferencing technology. The following provisions are among the key requirements for remote notarization in Connecticut:

- **Identification:** The person seeking notarization, if not personally known to the notary, must present "satisfactory evidence of identity" while connected through videoconferencing technology.
- **Recording:** The videoconferencing technology must be capable of recording the notarization, and the notary must make a recording of the notarization and retain the recording for at least 10 years.
- **Geographic Requirements:** The person seeking notarization must affirmatively represent through the videoconferencing technology that he or she is physically situated in Connecticut.
- **Document Transmission:** The person seeking notarization must transmit by fax or electronic means a legible copy of the signed document directly to the notary on the same day it was executed. The notary may notarize the transmitted copy of the document and transmit it back to the person seeking notarization by fax or electronic means.

Please consult [Executive Order No. 7K](#) for the comprehensive requirements for remote notarization in Connecticut.

MAINE

Effective until May 14, 2020, Maine notaries are permitted to notarize documents remotely through the use of two-way videoconferencing technology. The following provisions are among the key requirements for remote notarization in Maine:

- **Identification:** The notary must reasonably identify the person seeking notarization by (a) personal knowledge, (b) presentation of valid photo identification, or (c) oath or affirmation of a witness who (i) is in the physical presence of either the notary or the person, or simultaneously in contact with the notary and the person through videoconferencing technology and (ii) has personal knowledge of the person and has been reasonably identified by the notary. Before the documents are signed, the notary must be able to view by camera the entire space in which the person seeking notarization and any witness are located, and any person who is present in that space must state their name while on video and in clear view of the notary.
- **Recording:** The notary must create an audiovisual recording of the notarization and retain the recording for at least five years. The notary must provide a copy of the recording to the person seeking notarization and the secretary of state upon request.
- **Geographic Requirements:** The person seeking notarization, the notary, and any witnesses must be located in Maine. The person seeking notarization must state the name of the county in which he or she is located at the time of notarization.
- **Document Transmission:** The person seeking notarization must transmit to the notary and any witnesses by fax or electronic means a legible copy of the signed document to be notarized immediately after it is signed, or if that is not possible, no later than 24 hours after signing. Additionally, the person seeking notarization must send the original signed document to the witness within 48 hours of signing, or to the notary if no witnesses are involved. Within 48 hours of receiving the original document, the witness must sign it and send it to the second witness, if any, or to the notary if no other witness is involved. Once the notary receives the original document, if he or she is satisfied with the comparison of the original document to the faxed or electronic document, he or she must notarize the original document within 48 hours of receiving it, adding the following language below the Notary and/or Witness signature lines: *"Notarized (and/or Witnessed) remotely, in accordance with Executive Order 37 FY 19/20."* The official date and time for a notarization or witnessing is the date and time the notary or witness watched the person seeking notarization sign the document via videoconferencing technology.
- **Wills and Powers of Attorney:** For wills and powers of attorney, the notary or at least one witness must be a Maine licensed attorney.

Please consult [Executive Order 37](#) for the comprehensive requirements for remote notarization in Maine.

NEW HAMPSHIRE

For the duration of the state of emergency declared in [Executive Order 20-04](#) (presently effective through May 4, 2020³), New Hampshire notaries are permitted to notarize documents remotely through the use of two-way videoconferencing technology. The following provisions are among the key requirements for remote notarization in New Hampshire:

- Identification: The notary must reasonably identify the person seeking notarization by (a) personal knowledge, (b) two types of verification by review of public or private data sources provided by a third party, or (c) oath or affirmation of a credible witness with personal knowledge of the person, either in the physical presence of the notary or the person, or simultaneously in contact with the notary and person through videoconferencing technology.
- Recording: The notary, either directly or through an agent, must create an audiovisual recording of the notarization and retain the recording for the length of his or her service as a notary.
- Geographic Requirements: For individuals located physically outside of New Hampshire, remote notarization is only permitted for documents intended for filing with or relating to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the State of New Hampshire or documents involving a property located in New Hampshire or a transaction substantially connected to New Hampshire.
- Document Transmission: After signing the document to be notarized, the person seeking notarization must mail the signed copy of the documents to the notary for certification and execution with the notary's signature and the official stamp or seal. The official date and time of notarization are the date and time when the notary witnesses the signature via videoconferencing technology.

Please consult [Emergency Order #11](#) for the comprehensive requirements for remote notarization in New Hampshire.

RHODE ISLAND

For the duration of the state of emergency declared in [Executive Order 20-02](#) (presently effective through May 8, 2020⁴), Rhode Island notaries are permitted to notarize documents remotely through the use of two-way videoconferencing technology. The following provisions are among the key requirements for remote notarization in Rhode Island:

- Registration: Prior to conducting a remote notarization, the notary must register his or her capability to notarize remotely with the secretary of state.
- Approved Videoconferencing Technology: Remote notarization must take place through videoconferencing technology selected from the secretary of state's [list](#) of approved "solution providers."
- Identification: The notary must reasonably identify the person seeking notarization by: (a) two types of "identity proofing" by review of public or private data sources provided by a third party, including by verification of the person seeking notarization's DMV-issued driver's license or ID, passport, or military ID; (b) oath or affirmation of a credible witness with personal knowledge of the person, either in the physical presence of the notary or the person, or simultaneously in contact with the notary and the person through

videoconferencing technology; or (c) personal knowledge, defined as having a relationship with the person during which the notary has seen his or her identification.

- **Recording:** The notary must create an audiovisual recording of the notarization and retain a copy of it for at least 10 years.
- **Geographic Requirements:** For individuals located physically outside of Rhode Island, remote notarization is only permitted for documents intended for filing with or relating to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the United States or documents involving a property located in the United States or a transaction substantially connected to the United States.
- **Document Transmission:** After signing the document to be notarized, the person seeking notarization must mail the signed copy of the documents to the notary for certification and execution with the notary's signature and the official stamp. The official date and time of notarization are the date and time when the notary witnesses the signature via videoconferencing technology.

Please consult the [Standards of Conduct for Notaries Public in the State of Rhode Island](#) and the [Rhode Island Remote Online Notarization Temporary Performance Guide](#) for the comprehensive requirements for remote notarization in Rhode Island.

VERMONT

Effective from March 24, 2020 to September 20, 2020, Vermont notaries are permitted to notarize documents remotely through the use of two-way videoconferencing technology. The following provisions are among the key requirements for remote notarization in Vermont:

- **Types of Documents:** Paper documents can be remotely notarized, but electronic documents cannot. The person seeking notarization and the notary must both physically sign a tangible piece of paper. No electronic signatures are permitted.
- **Identification:** The person seeking notarization can be identified through: (a) personal knowledge of the notary; (b) satisfactory evidence through verification, on oath or affirmation, or through a credible witness appearing before the notary; or (c) the display of two forms of identification that provide satisfactory evidence of the individual's identity.
- **Recording:** The notary or a person acting on the notary's behalf must make an audiovisual recording of the notarization and retain the recording for at least seven years.
- **Geographic Requirements:** Both the person seeking notarization and the notary must be located in Vermont.
- **Document Transmission:** On the same day he or she signs the document to be notarized, the person seeking notarization must send it to the notary by mail or electronic means. On the same day the document is received, the notary must perform the notarization, affix a notarial act certificate to the document, and promptly transmit the notarized document to the person seeking notarization.

Please consult the [Vermont Secretary of State's Emergency Rules for Notaries Public and Remote Notarization](#) and the [guidance](#) published with respect to the same for the comprehensive requirements for remote notarization in Vermont.

MASSACHUSETTS

As of the date of publication, Massachusetts has not permitted Massachusetts notaries to conduct remote notarizations. However, legislators have proposed identical bills, [HD 4999](#) and [SD 2882](#) in the House of Representatives and Senate, respectively, that would temporarily permit a Massachusetts-licensed attorney who is also a notary, or a paralegal under attorney supervision who is also a notary, to conduct remote notarizations through the use of two-way videoconferencing technology, subject to various conditions.

The COVID-19 crisis may present an opportunity for states to rethink their in-person notarization requirements, potentially accelerating a trend toward remote notarization enabled by increasingly widespread use of videoconference technology. That said, whether the temporary remote notarization measures in place in Connecticut, Maine, New Hampshire, Rhode Island, and Vermont will yield permanent changes to the notarization laws in these states is not yet clear. Additionally, whether Massachusetts will permit remote notarization, even as a temporary measure, remains to be seen. In the meantime, those seeking to execute transactions that require notarization while complying with social-distancing guidelines can benefit from the liberalization of these rules in five of the six New England states. In light of the uncertain nature of the unfolding COVID-19 crisis, companies and individuals should remain alert to new orders, regulations, and rules relating to remote notarization in the New England states where they do business. K&L Gates will continue to monitor changes to state remote notarization rules as part of its broader coverage of governmental responses to the ongoing COVID-19 crisis.

FOOTNOTES

¹ Vermont passed a bill in 2018 empowering its Secretary of State to promulgate rules allowing for remote notarization; however, by the time of the COVID-19 outbreak, the Secretary had not exercised his power to do so.

² As of the date of publication, Massachusetts notaries are not permitted to conduct remote notarizations.

³ New Hampshire's Governor recently extended the State of Emergency pursuant to [Executive Order 20-05](#).

⁴ Rhode Island's Governor recently extended the State of Emergency pursuant to [Executive Order 20-18](#).

KEY CONTACTS



LINDSAY SAMPSON BISHOP
PARTNER

BOSTON
+1.617.951.9198
LINDSAY.BISHOP@KLGATES.COM



ABIGAIL P. HEMNES
PARTNER

BOSTON
+1.617.951.9053
ABIGAIL.HEMNES@KLGATES.COM



CHRISTOPHER J. VALENTE
PARTNER

BOSTON, WASHINGTON DC
+1.617.951.9071
CHRISTOPHER.VALENTE@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.