

**Maryland General Assembly
Department of Legislative Services**

**Proposed Regulations
Executive Department**
(DLS Control No. 20-080)

Overview and Legal and Fiscal Impact

The regulations establish procedures governing remote notarization and general responsibilities for all notaries, authorize the Office of the Secretary of State to communicate electronically and publish information relating to the status of the commission of a notary public or former notary public, and establish procedures for enforcement actions against notaries public.

The regulations present no legal issues of concern.

There is no fiscal impact on State or local agencies.

Regulations of COMAR Affected

Executive Department:

Secretary of State: Notary Public Fees: COMAR 01.02.08.01-.12

Legal Analysis

Background

Effective October 1, 2020, Chapter 407 (Senate Bill 678) of 2019 alters the laws related to notaries public and notarial acts. The Act modifies the qualifications necessary for an individual to be appointed as a notary public in the State by requiring that the individual be a resident of the State or have a place of employment or practice in the State, instead of requiring that the individual live or work in the State. The Act also repealed the requirement that an individual be of good moral character and integrity. Additionally, effective October 1, 2020, Chapter 407 would have required applicants to complete a course regarding laws, regulations, procedures, and ethics relevant to notarial acts and initial applicants to pass an exam on those topics. During the 2020 session, however, the Maryland General Assembly passed Chapter 571 (Senate Bill 636), which delays the date – by one year, to October 1, 2021 – on or after which an initial or renewal applicant for appointment as a notary public in the State must meet the education and examination requirements established under Chapter 407 of 2019. Accordingly, Chapter 571 delayed the date (to October 1, 2021) by which the Secretary of State must regularly offer a course of study and an examination covering the laws, regulations, procedures, and ethics relevant to notarial acts, as required under Chapter 407.

Summary of Regulations

Regulation .01 makes technical changes and adds relevant definitions, including adding new definitions for “communication technology,” “remote notarial act,” “remote online notary vendor,” “remotely located individual,” and “verification on oath or affirmation.”

Existing Regulation .02, governing the procedures for notarial acts, is repealed and subsequent existing regulations .03 and .04 are renumbered to .02 and .03, respectively. Former Regulation .03 (new .02), governing notary fees, clarifies that a notary may charge no more than \$4 for the performance of an original notarial act or remote notarial act and alters terminology to reflect that notarization is of a record, rather than document, and that an entry should be made in the notary’s journal.

New Regulations .04 through .07 govern procedures relating to remote notarization. Regulation .04 establishes requirements to qualify as an authorized remote online notary vendor and Regulation .05 establishes responsibilities of a remote online notary vendor. Regulation .06 authorizes the Secretary of State to revoke authorization of a remote online notary vendor if the Secretary of State determines that the technologies used by the remote online notary vendor do not meet the requirements of applicable law or regulations. Regulation .07 establishes obligations specific to notaries who perform remote notarial acts, including required notification to the Office of the Secretary of State and use of an authorized remote online notary vendor.

New Regulations .08 through .12 apply generally to all notaries public, with Regulation .08 governing the responsibilities for all notaries and Regulation .09 requiring notaries to notify the Office of the Secretary of State within 30 days of a change to the notary’s name or contact information. Regulation .10 establishes that, effective January 1, 2021, except for correspondence relating to enforcement actions, the Office of the Secretary of State will send all communications to notaries public using electronic mail only. According to the Statement of Purpose provided by the Secretary of State, this is a codification informing notaries of current practice.

Regulation .11 governs enforcement actions against notaries public, including acts or omissions for which the Secretary of State or Assistant Secretary of State may take an enforcement action against a notary public. Regulation .12 authorizes the Secretary of State to publish information relating to the status of the commission of a notary public or former notary public, including the date of commencement and expiration of any suspension, nonrenewal, or revocation of the commission and establishes that this publication is in compliance with provisions of the Maryland Public Information Act governing information about notaries public.

Legal Issues

The regulations present no legal issues of concern.

Statutory Authority and Legislative Intent

The Secretary of State cites §§ 18-103, 18-107 (this section is renumbered from § 18-112 effective October 1, 2020 by Ch. 407, Acts of 2019, § 1), and 18-222 of the State Government

Article as statutory authority for the regulations. Section 18-103 establishes procedures for application for original appointment as a notary public, notification, renewal, revocation, and reinstatement, and sets license terms and applicable fees. Section 18-107 requires the Secretary of State to adopt regulations to establish fees, not to exceed \$ 4 for an original notarial act or remote notarial act as well as fees for travel expenses. Section 18-222, which goes into effect October 1, 2020, requires the Secretary of State to adopt regulations to implement the Maryland Revised Uniform Law on Notarial Acts, including specifics of what may or may not be included in the regulations and certain factors the Secretary should consider.

This authority is correct and complete. The regulations comply with the legislative intent of the law.

Technical Corrections and Special Notes

In response to feedback from the Department of Legislative Services, the Secretary of State agreed to adjust the statutory authority citation for the regulations to reflect that it is § 18-112 of the State Government Article that was renumbered by Chapter 407 of 2019 to be § 18-107, rather than § 18-103.

Fiscal Analysis

There is no fiscal impact on State or local agencies.

Agency Estimate of Projected Fiscal Impact

The regulations primarily implement provisions of Chapter 407 of 2019 (Senate Bill 678) relating to remote notarization, responsibilities of notaries public, and enforcement actions against notaries public, among other things. The Secretary of State advises that the regulations have no impact on State or local governments. The Department of Legislative Services concurs and notes that the fiscal impact of Chapter 407 is already accounted for in the fiscal and policy note for Senate Bill 678.

In the fiscal and policy note for Senate Bill 678, the Department of Legislative Services estimated that the Secretary of State would require one additional notary officer to oversee specified provisions of the bill, including those related to remote and electronic notarization, and noted that additional staff and/or information technology equipment could be needed. The fiscal 2021 legislative appropriation for the Office of the Secretary of State included funding for 3.5 new contractual positions and contracts for notary database upgrades associated with the implementation of Chapter 407. Cost containment reductions to the fiscal 2021 legislative appropriation for the Office of the Secretary of State approved by the Board of Public Works on July 1, 2020, delay the notary database project.

Impact on Budget

There is no impact on the State operating or capital budget.

Agency Estimate of Projected Small Business Impact

The Secretary of State advises that the regulations have minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs and notes that the fiscal and policy note for Senate Bill 678 already assumes a potentially meaningful impact for small businesses that offer notary services.

Contact Information

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