

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	06/26/2020	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 7/31/2020

2. COMAR Codification

Title Subtitle Chapter Regulation

01 02 08 01-.12

3. Name of Promulgating Authority

Division of State Documents

4. Name of Regulations Coordinator Telephone Number

Gail S Klakring 410-260-3873

Mailing Address

City State Zip Code

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gail.klakring@maryland.gov

5. Name of Person to Call About this Document Telephone No.

Michael Schlein 410-260-3863

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michael.schlein@maryland.gov

6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Date when existing text was downloaded from COMAR online: June 17, 2020.

Repeal of Existing Regulations

Recodification

- Incorporation by Reference of Documents Requiring DSD Approval
- Reproposal of Substantively Different Text:

: Md. R
(vol.) (issue) (page nos) (date)

Under Maryland Register docket no.: --P.

7. Is there emergency text which is identical to this proposal:

Yes No

8. Incorporation by Reference

Check if applicable: Incorporation by Reference (IBR) approval form(s) attached and 18 copies of documents proposed for incorporation submitted to DSD. (Submit 18 paper copies of IBR document to DSD and one copy to AELR.)

9. Public Body - Open Meeting

OPTIONAL - If promulgating authority is a public body, check to include a sentence in the Notice of Proposed Action that proposed action was considered at an open meeting held pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

OPTIONAL - If promulgating authority is a public body, check to include a paragraph that final action will be considered at an open meeting.

10. Children's Environmental Health and Protection

Check if the system should send a copy of the proposal to the Children's Environmental Health and Protection Advisory Council.

11. Certificate of Authorized Officer

I certify that the attached document is in compliance with the Administrative Procedure Act. I also certify that the attached text has been approved for legality by Josaphine Yuzuik, Assistant Attorney General, (telephone #410-260-3855) on June 26, 2020. A written copy of the approval is on file at this agency.

Name of Authorized Officer

John C. Wobensmith

Title

Secretary of State

Telephone No.

410-260-3894

Date

June 26, 2020

Title 01

EXECUTIVE DEPARTMENT

Subtitle 02 SECRETARY OF STATE

01.02.08 Notary Public: General Regulations

Authority: State Government Article, §§ 18-103 (This section is renumbered as §18-107 effective October 1, 2020 by Ch. 407, Acts of 2019, §1), 18-107, and 18-222, Annotated Code of Maryland (Effective October 1, 2020 by Ch. 407, Acts of 2019, §1)

Notice of Proposed Action

□

The Secretary of State proposes to amend Regulations .01, repeal existing Regulation .02, amend and recodify existing Regulation .03 to be Regulation .02, recodify existing Regulation .04 to be Regulation .03, and adopt new Regulations .04—.12 under COMAR 01.02.08 Notary Public Fees.

Statement of Purpose

The purpose of this action is to put into place certain protections and safeguards for notaries public in anticipation of the enactment of the Maryland Revised Uniform Law on Notarial Acts and legalization of remote notarization on October 1, 2020. It includes qualifications that remote online notary vendors must meet before they can provide services to Maryland notaries public. The proposed action ensures that the technologies selected by Maryland notaries public meet certain standards for the protection of both notaries public and all citizens. The proposed action requires vendors to be based in the United States of America, to have been lawfully operating for at least three years, and that all encryption and decryptions take place within the United States. The proposed action ensures remote notary vendors have the capability to permit notaries public to meet the standards required by the law. Another purpose of this action is to identify enforcement actions regarding notaries public who fail to meet obligations under the law and applicable regulations. As the Governor has delegated enforcement authority to the Secretary of State and Assistant Secretary of State, the proposed action would permit the Secretary of State or Assistant Secretary of State to refuse to renew, suspend, or impose conditions on notaries public who fail to meet obligations under the law including, but not limited to, adequately identify the signer of a document, failing to maintain accurate records, or who overcharge the public for notarial fees. The proposed action clarifies that notaries public cannot charge more than a certain amount, \$4 per notarial act, and outlines recordkeeping requirements of notaries public. The action also informs the Secretary of State's Office process for communicating with notaries public, and requires notaries public to notify the Secretary of State's Office of name, email, and address changes.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michael Schlein, Division Administrator, Charities and Legal Services Division, Office of the Secretary of State, 16 Francis Street, Annapolis, MD 21401, or call 410-260-3863, or email to michael.schlein@maryland.gov, or fax to 410-974-5527. Comments will be accepted through August 31, 2020. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 21
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:
- E. If these regulations have no economic impact under Part A, indicate reason briefly:
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet.
- G. Small Business Worksheet:

Attached Document:

.01 Definitions.

- A. (text unchanged)

B. Terms Defined.

(1) "Acknowledgment" means a declaration by an individual *before a notarial officer* that [he or she]:

(a) *The individual* has [executed an instrument] *signed a record* for the [purposes] *purpose* stated [therein] *in the record*; and[.]

(b) [if] *If* the [instrument] *record* is [executed] *signed* in a representative capacity, [that] the individual signed the [instrument] *record* with proper authority, and [executed] *signed* it as the act of the [person] *individual* or entity [represented and identified therein] *identified in the record*.

(2) (text unchanged)

(3) "*Communication technology*" means an *electronic device or process* that:

(a) *Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound*; and

(b) *When necessary, under and consistent with other applicable law, facilitates communication between a notary public and a remotely located individual who has a vision, hearing, or speech impairment.*

[(3)] (4) *Notarial Act*.

(a) "Notarial act" means [any] *an act, whether performed with respect to a tangible or electronic record*, that a [notary public of this State is authorized to] *notarial officer may perform*[, and] *under the laws of the State*.

(b) "*Notarial act*" includes:

(i) [taking] *Taking* an acknowledgment[.];

(ii) [administering] *Administering* an oath or affirmation[.];

(iii) *Taking a verification on oath or affirmation*;

(iv) *Witnessing or attesting a signature*;

(v) *Certifying or attesting a copy*; and

(vi) [acting as an official witness to the execution of a document, and noting] *Noting* a protest of a

negotiable instrument.

[(4)] (5) "Notarize" means to perform a notarial act with respect to a [document] *record*.

[(5)] (6) "Notarization" means the act of notarizing.

[(6)] (7) "Oath" means a sworn solemn statement of truth made under penalty of perjury by an individual who believes in and appeals to a Divine Being to evidence the seriousness of the individual's actions or words.

[(7)] (8) "Original notarial act" means the completion of a single notarial act involving one [document] *record*.

(9) "*Remote notarial act*" means a notarial act performed by a notary public for a remotely located individual using communication technology.

(10) "*Remote online notary vendor*" is a company that provides communication technology used to facilitate a notarial act for a remotely located individual.

(11) "*Remotely located individual*" means an individual who is not in the physical presence of the notary public who performs a notarial act.

(12) "*Verification on oath or affirmation*" means a declaration made by an individual on oath or affirmation before a notarial officer that a statement in a record is true or that a remotely located individual has the identity claimed.

[.02 Original Notarial Acts for Documents.

A. Acknowledgment. To take an acknowledgment, a notary shall:

(1) Obtain satisfactory proof of identity of the individual signing the document;

(2) Observe the signing of the document;

(3) Take the spoken statement of the individual signing the document that the document is the individual's free act and deed;

(4) Complete and sign the notary certification of the document;

(5) Apply the notary seal to the document;

(6) Note the date the notary's commission expires on the document;

(7) Record the notarization in the notary's register of official acts.

B. Oath or Affirmation. To take an individual's oath or affirmation, a notary shall:

(1) Obtain satisfactory proof of identity of the individual signing the document;

(2) Observe the signing of the document;

(3) Take the individual's spoken statement that the individual swears or affirms, under penalty of perjury, that the contents of the document are true, either on the individual's personal knowledge, or to the best of the individual's knowledge, information, and belief;

(4) Complete and sign the notary certification on the document;

(5) Apply the notary seal to the document;

(6) Note the date the notary's commission expires on the document;

(7) Record the notarization in the notary's register of official acts.

C. Notary as Official Witness. To act as an official witness, a notary shall:

(1) Obtain satisfactory proof of identity of the individual signing the document;

(2) Observe the signing of the document;

- (3) Date, sign, and seal or stamp the document;
- (4) Note the date the notary's commission expires on the document;
- (5) Record the notarization in the notary's register of official acts.]

[.03].02 Fees.

A. A notary public may demand and receive a fee of *no more than* \$4 for the performance of an original notarial act or remote notarial act.

B. When a notary public is requested to notarize more than one copy of the same [document] record, where the copy or copies have been signed at the same time by the same person or persons, the notary may demand and receive \$2 for notarizing each signature on the original or first copy of the [document] record, and may demand and receive \$1 for each signature on each additional copy of the same [document] record.

C. When a notary public is requested to make reproductions of a notarized [document] record or an entry in the notary's [register of official acts] journal by photocopying or other means, the notary may demand and receive not more than \$1 for each copy furnished.

D. A notary public may demand and receive reimbursement at the prevailing rate for mileage established by the Internal Revenue Service for business travel and a fee not to exceed \$5 for travel if required for the performance of a notarial act.

E. A notary public may charge \$2 for certifying a copy of a record in the notary's [register of official acts] journal.

[.04].03 Processing Fee.

Each application for an original or renewal appointment as a notary public shall be accompanied by a processing fee of \$9 payable to the Secretary of State.

.04 Qualifications of Remote Online Notary Vendors.

A. To qualify as an authorized remote online notary vendor by the Secretary of State, the vendor shall meet the following criteria:

- (1) The vendor shall be incorporated to do business in the United States of America;
- (2) The vendor shall be a company based in the United States of America that has been lawfully operating in the United States of America for at least 3 years;
- (3) All encryption and decryption services provided by the remote online notary vendor shall occur in the United States of America; and
- (4) Utilizes commercially reasonable practices, procedures and technology consistent with or better than the practices, procedures and technology generally used by other vendors engaged in offering remote notarization services.

B. Technology used by a remote online notary vendor shall allow Maryland notaries public to meet requirements of the notary law, including but not limited to the following:

- (1) Allow the notary to securely identify the remotely located individual by personal knowledge or satisfactory evidence as described in State Government Article, §18-214(a)(1)(i)-(iii), Annotated Code of Maryland;
- (2) Retention of audio-visual recordings created under State Government Article, §18-214(a)(3), Annotated Code of Maryland for at least 10 years; and
- (3) Ensure that the notary public has access to the audio-visual recordings of their notarial acts.

.05 Responsibilities of a Remote Online Notary Vendor.

A. A remote online notary vendor shall receive written authorization from the Secretary of State before allowing its technology to be used by Maryland notaries public.

B. A remote online notary vendor shall apply to the Secretary of State for authorization using the form prescribed for this purpose by the Secretary of State.

C. Before a remote online notary vendor may provide services to a Maryland notary public, the vendor shall:

- (1) Provide training to the Maryland notary public on how to use the remote online notary vendor's technology; and
- (2) Check with the Office of the Secretary of State or the Office's website to confirm that a notary public is in good standing:
 - (i) At the time the notary subscribes to its service; and
 - (ii) Annually thereafter, for the duration of the notary's subscription to its service.

D. A remote online notary vendor shall comply with the information security protections and procedures found in the Maryland Personal Information Protection Act, Commercial Law Article, § 14-3501 et seq., Annotated Code of Maryland.

E. In the event of a breach of a security system, a remote online notary vendor shall provide notice of a breach of the security of a system to the Office of the Secretary of State at the same time as giving the notice required by the Maryland Personal Information Protection Act, Commercial Law Article, § 14-3504(b), Annotated Code of Maryland.

.06 Revocation of Remote Online Notary Vendor Authorization.

The Secretary of State may 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. Prior to revoking authorization, the Secretary of State or a designee may speak to the vendor informally to determine if the vendor meets the qualifications for authorization set forth in Regulation .04 of this chapter and responsibilities set forth in Regulation .05 of this chapter.

.07 Obligations of Notaries Public Who Perform Remote Notarial Acts.

A. *To perform remote notarial acts, a Maryland notary public shall be a currently commissioned Maryland notary public in good standing and shall:*

(1) *Notify the Office of the Secretary of State in writing of their intent to perform remote notarial acts using a form prescribed by the Office of the Secretary of State for this purpose before they may perform remote notarial acts;*

(2) *Identify the authorized remote online notary vendor or vendors they intend to use to perform remote notarial acts;*

(3) *Use technology that can make an audio-visual record of the entire physical location of the notarial act and all persons physically present for the remote notarial act;*

(4) *Require all persons physically present with the remotely located individual for the remote notarial act to identify themselves and their role in the transaction;*

(5) *Charge no more than the allowed fee for an original notarial act as set forth in Regulation .02 of this chapter;*

(6) *Create and retain an audio-visual recording of each performance of a remote notarial act for a minimum of 10 years; and*

(7) *Notify the Office of the Secretary of State in writing within 10 business days after making a change to a new remote online notary vendor, if the notary public changes vendors.*

B. *If the notary public reasonably believes a remote online notary vendor previously selected does not allow the notary public to meet requirements set forth in State Government Article, Title 18, Subtitle 2, Annotated Code of Maryland, and any applicable regulations, the notary public shall promptly notify the Office of the Secretary of State in writing.*

C. *Upon renewal of a notary public's commission, a notary public will be required to submit a new remote notary notification form with the Office of the Secretary of State.*

D. *A notary public's authority to perform remote notarial acts expires with the expiration of their notary public commission.*

E. *A notary public authorized to perform remote notarial acts may cancel their authorization by submitting a written notice to the Office of the Secretary of State.*

F. *It is unlawful for any individual to represent themselves to be authorized to perform remote notarial acts if the individual has not provided the required notification to the Office of the Secretary of State.*

G. *The Secretary of State may not authorize a notary public to perform remote notarial acts if the person submits a notary application containing a substantial and material misstatement or omission of fact.*

.08 Responsibilities of Notaries Public.

A. *The notary is responsible for reading and understanding State Government Article, Title 18, Annotated Code of Maryland as well as regulations, handbooks, and other public guidance issued by the Secretary of State relating to responsibilities of notaries public and performance of notarial acts.*

B. *Notaries public are public officers and it is their legal responsibility to perform notarial acts in compliance with the notary law and regulations.*

C. *When a notary public uses an identification credential under State Government Article § 18-206(b), Annotated Code of Maryland or State Government § 18-214(a)(1)(ii-iii), Annotated Code of Maryland to identify a remotely located individual or an individual in the notary public's physical presence for the performance of a notarial act, the notary public shall document in the notary's journal the identification number associated with the identification credential as confirmation that the individual signing a record was correctly identified.*

.09 Change in Name, Address, or Email Information

Notaries public are required to notify the Office of the Secretary of State within 30 days if, at any time during their commission, a notary public changes their:

A. *Name;*

B. *Home address;*

C. *Home phone number;*

D. *Cell phone number, if one was provided at the time of application;*

E. *Electronic mail (email) address;*

F. *Business phone number; or*

G. *County of residence.*

.10 Electronic Mail Communications.

Effective January 1, 2021, and 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. Each notary public is responsible for ensuring the Office of the Secretary of State has a current and active email address.

.11 Enforcement Actions.

A. Due to a lawful delegation of authority from the Governor pursuant to State Government Article, §18-104(b)(1), Annotated Code of Maryland, the Secretary of State effective January 21, 2015 and the Assistant Secretary of State effective September 2, 2015, may take an enforcement action under State Government Article, §18-104(a), Annotated Code of Maryland to deny, refuse to renew, revoke, suspend, or impose conditions on a commission as notary public for any act or omission that demonstrates the individual lacks the honesty, integrity, competence, or reliability to act as a notary public.

B. Acts or omissions found in State Government Article, §18-104(a)(1)(i)—(vii), Annotated Code of Maryland, govern when the Secretary of State or Assistant Secretary of State may take an enforcement action against a notary public.

C. Acts or omissions that may constitute a failure to discharge any duty required of a notary public, whether imposed by any federal or State law or regulations adopted by the Secretary of State, include but are not limited to:

(1) Failure to adequately identify a signer under the standards set forth in State Government Article, §18-206(a) or (b), Annotated Code of Maryland;

(2) Failure to properly execute a certificate of a notarial act in accordance with State Government Article, §18-215, Annotated Code of Maryland;

(3) Charging a fee for notarial services higher than allowable by Regulation .02 of this chapter;

(4) Failure to maintain an accurate record of notarial acts in a journal as required by State Government Article, §18-219, Annotated Code of Maryland; and

(5) Performing a remote notarial act before notifying the Secretary of State as required by Regulation .07A(1) of this chapter and State Government Article, §18-214(e), Annotated Code of Maryland.

D. A notary public convicted of a felony or crime involving fraud, dishonesty, or deceit shall report the conviction to the Office of the Secretary of State within 10 days of the conviction or within 10 days after they are released from incarceration, whichever is later. Failure to properly report under this paragraph may result in an enforcement action against the notary public under this regulation.

.12 Publication of Commission Status.

The Office of the Secretary of State may choose 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. Disclosure of information under this regulation is deemed compliant with General Provisions Article, §4-332(b)(4), Annotated Code of Maryland.

JOHN C. WOBENSMITH
Secretary of State