

REAL ESTATE ADVISORY

Remote Notarization in Colorado



Pursuant to Executive Order D 2020 019 issued March 27, 2020, as extended by Executive Order D 2020 030 issued April 6, 2020 (collectively, the **Executive Order**), Governor Polis temporarily suspended the requirement that an individual whose signature is being notarized appear personally (i.e., in the physical presence of) before a notarial officer, as set forth in C.R.S. § 24-21-506. **The order expires April 30, 2020, unless further extended pursuant to Executive Order.**

The order also authorizes the Secretary of State to authorize notarial officers to perform such remote notarizations and establish related processes and standards. Pursuant to such authorization, on March 30, 2020, the Office of the Secretary of State promulgated a temporary new **Rule 5**—Remote Notarization addition to 8 CCR 1505-11 Notary Program Rules. The Office of the Secretary of State has also promulgated [Notary Public FAQs](#) addressing remote notarization (the **FAQs**).

SCOPE

The authority for remote notarization does *not* include:

1. Any notarial act required by Title 1 of Colorado Revised Statutes (Elections) (*Executive Order Directive A and Rule 5.2.2.A*)
2. Any impact on the rights or duties of parties to existing contracts of insurance or other private contracts that may require or anticipate in-person notarization of documents (nor does anything in the order preclude the parties to any such contract from waiving or modifying any provision thereof) (*Executive Order Directive C*)
3. The performance of a remote notarization for any person outside Colorado or by any notary located outside of Colorado (See also *FAQ Q13*)

The authority *does* apply to a will, as defined under C.R.S. § 15-10-201(59), provided certain transmittal requirements in addition to those otherwise required are satisfied. (See *Transmittal of Record* section below.)



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REQUIREMENTS

1. The notary must be a currently commissioned notary in Colorado and located in Colorado when the notarial act is performed (*Rule 5.2.3*). The notary must have a status of "Active" in the Secretary of State's online database (*FAQ Q1*).

There is *no* requirement that the notary, before performing a remote notarial act, notify the Colorado Secretary of State that the notary will be performing remote notarizations, identify the system the notary will use, provide affirmation of compliance with the Remote Notarization Rules, or complete any training or examination beyond what is otherwise required. *Compare the requirements for Electronic Notarization (addressed below) and the latest Colorado legislation on remote notarization, Senate Bill 20-096 addition to C.R.S. § 24-21-514.5(3).*

2. The remote notarization system used must (*Rule 5.2.4*):
 - a. Enable the notary to verify the identity of the remotely located individual and any required witness by satisfactory evidence of identity
 - i. The notary has satisfactory evidence of such identity if:
 - The notary can identify the signatory by means of audio-video communication using a government-issued identification such as a driver's license, passport, or other identification with a picture and signature of the signatory, in each case in which identification is current or not expired for more than one year as of the date of the notarial act (*Rule 5.2.4.A* and *5.2.5.B.1*); or
 - The notary can identify the signatory by means of personal knowledge (*Rule 5.2.4.A* and *5.2.5.A*); or
 - The notary can identify the signatory by means of the oath or affirmation of a credible witness who personally knows the signatory, is personally known to the notary, or presents a government-issued identification and is in the physical presence of the notary or the signatory (*Rule 5.2.5.B(1)*).
 - ii. There is *no* requirement for such identification to be supplemented or confirmed by either:
 - The oath or affirmation of a witness (Compare Senate Bill 20-096 addition to C.R.S. § 24-21-514.5(6)(b)(I) and C.R.S. § 24-21-514.5(9)(b)(IV)); or
 - A "credential analysis" by which a third party affirms the validity of a government-issued ID through the review of public or proprietary data sources. (Compare Senate Bill 20-096 addition to C.R.S. § 24-21-514.5(1)(a), 24-21-514.5(1)(e)(II), and 24-21-514.5(1)(a).
 - b. Enable the notary to verify the notary, signatory, and any required witnesses are viewing the same record* and that all signatures, changes, and attachments are made in real time, and:

**However, Rule 5.2.8.C (addressed in greater detail below), limits what a notary is to include in the required audio-video recording of the signing and notarization, effectively requiring the notary to use good-faith efforts to exclude from the audio-video recording the contents of the record itself being signed.*

 - i. FAQs further clarify that the notarized act must be witnessed in real time, i.e., the notary and the remotely located individual must be able to "see and hear each other substantially simultaneously and without interruption or disconnection." A notary cannot notarize a document after watching a previously recorded or taped audio-video of a person signing or acknowledging a document (*FAQ Q6*).
 - ii. FAQs also clarify that the document being acknowledged may be in an electronic form or a hard paper copy form when it is signed or acknowledged* (*FAQ Q15*).

**Distinguish Electronic Notarization, addressed below*

- c. Make an audio-video recording of the interaction so it can be viewed at a later date.
 - i. If the remotely located individual does not want to be recorded, then the notary cannot perform remote notarization (FAQ Q7).
 - ii. Without endorsing any specific application or vendor, the FAQs state:

Some mainstream applications that may be used to perform remote notarizations include the Zoom, Skype, and GoToMeeting applications (FAQ Q3).
 - ii. The FAQs also include, without endorsing, a list of vendors that provide remote notarization services (FAQ Q3).
3. The FAQs appear to clarify that an electronic document electronically signed may be notarized remotely in accordance with Rule 5 but may not be electronically notarized* (FAQ Q15).

***Electronic Notarization Distinguished.** Electronic notarization is authorized by C.R.S. § 24-71.3-111. The details of the program are addressed in C.R.S. § 24-21-520 and 8 CCR 1505-11 Notary Program Rules addressing electronic notarization, which:

 - Allow only Colorado notaries who are currently commissioned and have been approved as eNotaries by the Secretary of State's Office to perform electronic notarization
 - Require, before a notary performs the notary's initial notarial act with respect to an electronic record, notification to the Secretary of State's office that the notary will be performing notarial acts with respect to electronic records and identifying the technology the notary intends to use
 - Require the electronic signature of a notary public to contain or be accompanied by a unique document authentication number issued by the Secretary of State, with a different document authentication number being required for each electronic notarization
 - Clarify that the signer must appear in the physical presence of the notary to affirm, swear, or acknowledge the document being notarized. See *official comment to C.R.S. § 24-71.3-111*.

See also, Electronic Notary Public FAQs promulgated by the Office of the Secretary of State: <https://www.sos.state.co.us/pubs/notary/eNotary.html>.
4. A notary may refuse to perform a notarial act under Rule 5 if the notary is not satisfied the requirements of the rule are met (Rule 5.2.6).

RECORD

1. A certificate for a notarial act for a remote notarization must indicate the notarial act was performed using audio-video technology and comply with C.R.S. § 24-21-515 (be executed contemporaneously with the performance of the notarial act, signed and dated by the notarial officer, identify the county and state in which the notarial act is performed, contain the title of office of the notarial officer, and indicate the date of expiration of the officer's commission) (Rule 5.2.7 and FAQ Q11).

Distinguish Electronic Notarization, the record for which is also required to include a unique document authentication number issued by the Secretary of State.
2. A remote notarization must be recorded in an audio-video recording satisfying the following requirements (Rule 5.2.8 and FAQ Q9):
 - a. First disclose to the signatory that there will be an audio-video recording of the notarial act and the details of its intended storage, including where and for how long it will be stored;
 - b. Ensure the signatory consents to both the recording and the storage; and

- c. Securely store the recording for 10 years in compliance with C.R.S. § 24-21-519 (pertaining to a notary public's journal).
3. The record of the remote notarization must contain (and the notary will make a good-faith effort to include in the audio-video recording *only*) the following (*Rule 5.2.8.C* and *FAQ Q9*):
 - a. At the beginning of the recording, a recitation by the notary sufficient to identify the notarial act, including the name of the notary, date and time of the notarial act, a description of the documents to which the notarial act relates, the identity of the signatory, the identity of any person who will act as a credible witness (see Requirements item 2(a)(ii)(2) above and Record item 3(d) below), the method or methods by which the signatory (and credible witness) will be identified by the notary;
 - b. A declaration by the signatory that the signatory's actions before the notary are knowingly and voluntarily made;
 - c. If the signatory for whom the notarial act is being performed is being identified by personal knowledge, an explanation by the notary as to how the notary knows the signatory and for how long;
 - d. If the signatory is identified by a credible witness:
 - If the witness is identified by the notary by personal knowledge, a statement by the notary as to how the notary knows the signatory and for how long, or
 - If the witness is identified through a government-issued identification;
 - e. Any other statements, act, and conduct necessary to perform the notarial act.
 4. A remote notarization must be recorded in the notary's journal (*Rule 5.3* and *FAQ Q4*).

Transmittal of Record

1. After the notary performs the notarial act (*Rule 5.2.9.A* and *FAQ Q10*):
 - a. The signatory must transmit a legible copy of the recording by fax, email, or other electronic means to the notary on the date the notarial act took place.
 - b. The notary must notarize the transmitted copy of the document as soon as received and transmit the same back to the signatory.
2. If the record is a will, as defined under C.R.S. § 15-10-201(59) (*Rule 5.2.9.C*):
 - a. The original signed record must be presented to the notary within 15 calendar days of the date of the remote notarization; and
 - b. Within three calendar days of receiving the signed record, the notary must confirm such record is identical to the record remotely notarized* and, if so, affix the notary's public signature and seal on the original, reflecting the date of the remote notarization.

**Rule 5.2.8.C (addressed in detail above) limits what a notary is to include in the required audio-video recording of the signing and notarization, effectively requiring the notary to use good-faith efforts to exclude from the audio-video recording the contents of the will being signed.*

A will of a remotely located testator is not acknowledged in accordance with C.R.S. § 15-11-502(1)(c) unless it is notarized per all requirements of Rule 5.2.9.C.