

§1915. Notarial act performed for remotely located individual

1. Definitions. As used in this section, the following terms have the following meanings.

A. "Communication technology" means an electronic device or process that allows a notarial officer and a remotely located individual to communicate with each other simultaneously by sight and sound. When necessary and consistent with other applicable laws, "communication technology" includes an electronic device or process that facilitates communication with a remotely located individual who has a vision, hearing or speech impairment. [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

B. "Foreign state" means a jurisdiction other than the United States, a state or a federally recognized Indian tribe. [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

C. "Identity proofing" means a process or service by which a 3rd person provides a notarial officer with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources. [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

D. "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory, insular possession or other location subject to the jurisdiction of the United States. [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

E. "Remotely located individual" means an individual who is not in the physical presence of the notarial officer who performs a notarial act under subsection 3. [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

2. Personal appearance by communication technology authorized. Except as provided in subsection 16, a remotely located individual may comply with section 1906 by using communication technology to appear before a notarial officer.

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

3. Remote notarization authorized. Except as provided in subsection 16, a notarial officer located in this State may use communication technology to perform a notarial act for a remotely located individual if:

A. The notarial officer:

(1) Has personal knowledge under section 1907, subsection 1 of the identity of the remotely located individual;

(2) Has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notarial officer under section 1907, subsection 2 or this section; or

(3) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least 2 different types of identity proofing; [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

B. The notarial officer is able reasonably to confirm that a record before the notarial officer is the same record in which the remotely located individual made a statement or on which the individual executed a signature; [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

C. The notarial officer, or a person acting on behalf of the notarial officer, creates an audiovisual recording of the performance of the notarial act; and [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

D. For a remotely located individual located outside the United States:

(1) The record:

(a) Is to be filed with or relates to a matter before a public official or court, governmental entity or other entity subject to the jurisdiction of the United States; or

(b) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

(2) The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located. [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

4. Remote acknowledgement of tangible record. A notarial officer located in this State may use communication technology under subsection 3 to take an acknowledgment of a signature on a tangible record physically present before the notarial officer if the record is displayed to and identified by the remotely located individual during the audiovisual recording under subsection 3, paragraph C.

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

5. Declaration required. The requirement under subsection 3, paragraph B for the performance of a notarial act with respect to a tangible record not physically present before the notarial officer is satisfied if:

A. The remotely located individual:

(1) During the audiovisual recording under subsection 3, paragraph C, signs:

(a) The record; and

(b) A declaration, in substantially the following form, that is part of or securely attached to the record:

I declare under penalty of perjury that the record of which this declaration is a part or to which it is attached is the same record on which (name of notarial officer), a notarial officer, performed a notarial act and before whom I appeared by means of communication technology on (date).

.....

(Signature of remotely located individual)

.....

(Printed name of remotely located individual); and

(2) Sends the record and declaration to the notarial officer not later than 4 days after the notarial act was performed; and [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

B. The notarial officer:

(1) In the audiovisual recording under subsection 3, paragraph C, records the individual signing the record and declaration; and

(2) After receipt of the record and declaration from the individual, executes a certificate of notarial act under section 1916, which must include a statement in substantially the following form:

I (name of notarial officer) witnessed, by means of communication technology, (name of remotely located individual) sign the attached record and declaration on (date). [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

6. Notarial act deemed contemporaneous. A notarial act performed in compliance with subsection 5 complies with section 1916, subsection 1, paragraph A and is effective on the date the remotely located individual signed the declaration under subsection 5, paragraph A, subparagraph (1), division (b).

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

7. Other procedures not precluded. Subsection 5 does not preclude use of another procedure to satisfy subsection 3, paragraph B for a notarial act performed with respect to a tangible record.

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

8. Remote oaths authorized. A notarial officer located in this State may use communication technology under subsection 3 to administer an oath or affirmation to a remotely located individual if, except as otherwise provided by other laws of this State, the notarial officer:

A. Identifies the individual under subsection 3, paragraph A; [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

B. Creates or causes the creation under subsection 3, paragraph C of an audiovisual recording of the individual taking the oath or affirmation; and [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

C. Retains or causes the retention under subsection 11 of the recording. [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

9. Certificate must indicate use of communication technology. If a notarial act is performed under this section, the certificate of notarial act under section 1916 and the short form certificate under section 1917 must indicate that the notarial act was performed using communication technology.

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

10. Form of short form certificate. A short form certificate under section 1917 for a notarial act subject to this section is sufficient if it:

A. Complies with rules adopted under subsection 13, paragraph A; or [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

B. Complies with section 1917 and contains a statement in substantially the following form:

This notarial act involved the use of communication technology. [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

11. Retention of recording. A notarial officer, a guardian, conservator or agent of a notarial officer or a personal representative of a deceased notarial officer shall retain the audiovisual recording created under subsection 3, paragraph C or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subsection 13, paragraph D, the recording must be retained for at least 10 years.

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

12. Notice to Secretary of State. Before a notarial officer performs the notarial officer's initial notarial act under this section, the notarial officer shall notify the Secretary of State that the notarial officer will be performing notarial acts with respect to remotely located individuals and identify the technologies the notarial officer intends to use. If the Secretary of State has established by rule standards under subsection 13 and section 1928 for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

13. Rules. In addition to adopting rules under section 1928, the Secretary of State may adopt rules regarding performance of a notarial act under this section. The rules may:

- A. Prescribe the means of performing a notarial act involving a remotely located individual using communication technology; [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]
- B. Establish standards for communication technology and identity proofing; [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]
- C. Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]
- D. Establish standards and a period for the retention of an audiovisual recording under subsection 3, paragraph C; and [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]
- E. Prescribe methods for a notarial officer to confirm under subsections 4 and 5 the identity of a tangible record. [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

14. Rulemaking considerations. Before adopting, amending or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the Secretary of State shall consider:

- A. The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of a national association of secretaries of state; [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]
- B. Standards, practices and customs of other jurisdictions that have laws substantially similar to this section; and [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]
- C. The views of governmental officials and entities and other interested persons. [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

15. Service of process. By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audiovisual recording under subsection 3, paragraph C, the provider of the communication technology, identity proofing or storage appoints the Secretary of State as the provider's agent for service of process in any civil action in this State related to the notarial act. The Secretary of State may specify by rule a reasonable fee for accepting service of process under this subsection.

[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

16. Certain remote notarial acts prohibited. Notwithstanding any provision of this chapter to the contrary, a notarial officer may not perform the following notarial acts for a remotely located individual:

- A. Witnessing the marking and sealing of an absentee ballot pursuant to Title 21-A, section 754-A; [RR 2021, c. 2, Pt. A, §3 (COR).]
- B. Administering an oath or affirmation to a candidate for office under Title 21-A, section 336 or 355; [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]
- C. Administering an oath or affirmation to the circulator of a candidate petition under Title 21-A, section 335 or 354; [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

D. Witnessing the signing of an application for a people's veto referendum or the direct initiative of legislation under Title 21-A, section 901; or [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

E. Administering an oath or affirmation to the circulator of a people's veto referendum or the direct initiative of legislation under Title 21-A, section 902. [PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]
[RR 2021, c. 2, Pt. A, §3 (COR).]

17. Solemnization of marriage remotely prohibited. A notarial officer may not solemnize a marriage pursuant to Title 19-A, section 655 for a remotely located individual.
[PL 2021, c. 651, Pt. A, §4 (NEW); PL 2021, c. 651, Pt. A, §8 (AFF).]

SECTION HISTORY

PL 2021, c. 651, Pt. A, §4 (NEW). PL 2021, c. 651, Pt. A, §8 (AFF). RR 2021, c. 2, Pt. A, §3 (COR).

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