**Sample Language for Emergency Notarization Order**

*(Fill in areas highlighted in yellow as appropriate.*

*Under definitions, optional language is highlighted in blue.)*

**WHEREAS,** …INSERT STATE SPECIFIC INFORMATION…

**NOW, THEREFORE,** I, …NAME…, Governor of the State/Commonwealth of …NAME…, by the authority vested in me by the Constitution and laws of the State of …STATE…., do hereby order and direct as follows:

1. In order to provide …STATE…citizens and businesses with a secure, safe, and legal method by which to execute important legal documents for the duration of the State of Emergency in my … DATE… Proclamation/Executive Order, providing an alternative to the in-person physical presence requirement under the current notarial process is a necessary measure to combat the COVID-19 emergency. Accordingly, pursuant to …STATE LAW REFERENCE…for the duration of the State of Emergency allows notaries public commissioned under the laws of this State/Commonwealth to perform a notarization for a principal not in the physical presence of the notary public, provided the following conditions are met:
2. the principal and the notary public can communicate simultaneously by sight and sound through an electronic device or process at the time of the signing;
3. the notary public, located in the geographic boundaries of the state:
4. has reasonably identified the principal by one or more of the following:
5. personal knowledge of the principal
6. at least two different types of processes or services by which a third person provides a means to verify the identity of the individual through a review of public or private data sources;
7. a government identification credential, which may be remotely presented through communication technology, that is issued to the individual and contains the signature and photograph of the individual; or
8. oath or affirmation of a credible witness who (I) is in the physical presence of either the notary public or the principal or (II) is able to communicate with the notary public and the principal simultaneously by sight and sound through an electronic device or process at the time of the notarization, if the credible witness has personal knowledge of the principal and has been reasonably identified by the notary public under clause (a) or (b); and

ii. either directly or through a service provider:

1. creates an audio and visual recording of the performance of the notarization; and
2. retains such recording as a notarial record for the duration of the lesser of the term of the notary public's office, including renewals thereof, or ten years, unless a law of the State requires a different period of retention, and if any laws of the State govern the content, retention, security, use, effect, and disclosure of such recording and any information contained therein such recording shall be subject thereto; and

iii. for a principal physically located outside the geographic boundaries of the State of …STATE…-

a) the record or document –

1) is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the State of …STATE….; or

2) involves property located in the territorial jurisdiction of the State of …STATE… or a transaction substantially connected to the State of …STATE…; and

b) the notary public has no actual knowledge that the act of making the statement or signing the record or document is prohibited by the laws of the jurisdiction in which the principal is physically located.

1. If a State law requires a principal to appear personally before or be in the physical presence of a notary public at the time of a notarization that requirement shall be satisfied if the principal and the notary public are not in the physical presence of each other but can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization and the requirements of section 1 above are met.
2. Nothing in this Order shall require a notary public commissioned under the laws of the State of …STATE…. to perform a notarization-
3. with respect to an electronic record or document;
4. for a principal not in the physical presence of the notary public; or
5. using a technology that the notary public has not selected.
6. In the case of a document in tangible form signed by a remotely located individual while being witnessed by a notary public using simultaneous audio-video communication technology,
7. once signed, the requesting person shall mail the signed documents to the notary public for certification and execution with the notary public's signature and the official stamp or seal.
8. the official date and time of the notarization shall be the date and time when the notary public witnesses the signature via the electronic devices that provide the audio-video presence.
9. In the case of an electronic document or record signed electronically by a remotely located individual through the use of a remote online notarization platform,
10. once signed, the notary public may affix their signature and their official stamp or seal.
11. The official date and time of the notarization shall be the date and time determined by the remote online notarization platform.
12. In addition to the …(ADD DOLLAR AMOUNT)…fee per signature that a notary public may charge for a notarial act, a notary public may charge an additional fee for notarial acts under this rule of up to …( ADD DOLLAR AMOUNT)…for any notarial act conducted when witnessing the signing of a document by a remotely located individual for the purpose of covering the cost of the remote online notarization platform.
13. In order to facilitate the recording of documents that have been electronically signed and electronically notarized using a remote online notarization platform, a notary public that has witnessed the signing of an electronic document by a remotely located individual, may certify that a tangible copy of the electronic document is a true and correct copy of the electronic document by attaching a "certificate of electronic document" using the following form:

**CERTIFICATE OF ELECTRONIC DOCUMENT**

I certify that the attached document **…(insert title)…**, dated**…(insert date)…**, and containing **…(insert number)…**pages, is a true and correct copy of an electronic document printed by me or under my supervision. I further certify that, at the time of printing no security features present on the electronic document indicated any changes or errors in an electronic signature or other information in the electronic document after the electronic document's creation or execution. This certification is made under penalty of perjury.

Singed this the**…(insert date)…**day of **…(insert month)…**, 2020

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 (Signature of Notary Public)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 (Printed Name of Notary Public)

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. The notary public making the certification provided in Section 7 above shall:
2. confirm that the electronic document contains an electronic signature that is capable of independent verification and renders any subsequent changes or modifications to the electronic document evident;
3. personally print or supervise the printing of the electronic document onto paper; and
4. not make any changes or modifications to the electronic document other than the certification described in paragraph 7.
5. The validity and recognition of a notarization under this Order shall not prevent an aggrieved person from seeking to invalidate a record, document, or transaction that is the subject of a notarization or from seeking other remedies based on State or Federal law other than this Order for any reason not addressed in this Order, including on the basis-

A. that a person did not, with present intent to authenticate or adopt a record or document

i. execute or adopt on the record or document a tangible symbol; or

ii. attach to or logically associate with the record or document an electronic signature;

B. that a principal was incompetent, lacked authority or capacity to execute the record or document, or did not knowingly and voluntarily execute a record or document; or

1. of fraud, forgery, mistake, misrepresentation, impersonation, duress, undue influence, or other invalidating cause.
2. Nothing in this Order shall affect or supersede a State law or rule governing, authorizing, or prohibiting the practice of law.
3. The failure of a notary public to meet a requirement specified in this Order shall not invalidate or impair the recognition of a notarization performed by the notary public under the authority granted in this Order.
4. This Order shall not be construed to create a public or private cause of action or remedy.
5. This Order shall not affect the validity of a notarization performed before the effective date hereof. The validity and recognition of a notarization performed pursuant to the terms of this Order and during the period hereof, shall not be affected by the subsequent expiration, modification, amendment or revocation of this Order.
6. If any provision of this Order or the application of such provision to any person or circumstance is held to be invalid or unconstitutional, the remainder of this Order and the application of the provisions thereof to other persons or circumstances shall not be affected thereby.
7. In this Order:
8. The term "commissioned" includes appointed and licensed.
9. With respect to real property, the term "document" has the meaning given that term in [Add reference to existing definition in state law].
10. The term "electronic" has the meaning given that term in [Add reference to existing definition in state law including any separate definition which may exist with reference to “real property”] or [Utilize Uniform Law Commission Definition: “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities].
11. The term "electronic record" has the meaning given that term in [Add reference to existing definition in state law].
12. With respect to real property, the term "electronic document" has the meaning given that term in [Add reference to existing definition in state law].
13. The term "electronic signature" has the meaning given that term in [Add reference to existing definition in state law including any separate definition which may exist with reference to “real property”] or [Utilize Uniform Law Commission Definition: “Electronic signature” means an electronic symbol, sound, or process attached to or logically associated with a record and executed or adopted by an individual with the intent to sign the record].
14. The term "information" has the meaning given that term in [Add reference to existing definition in state law].
15. The term "law" includes any statute, regulation, or rule of law.
16. The term "notarization" includes:
17. any act-whether performed with respect to a tangible or electronic record and whether performed in a principal, official, or representative capacity-that a notary public may perform under the State of …STATE…or the law of the State in which the principal giving the acknowledgment is located, or under the laws of the State under which the notary public is commissioned; and
18. any such act in which a principal making a statement or executing a record is not in the physical presence of the notary public but is able to communicate with the notary public simultaneously by sight and sound through an electronic device or process at the time of such act.
19. The term "notary public" has the meaning given that term in [Add reference to existing definition in state law] or [Utilize Uniform Law Commission Definition: “Notary public” means an individual commissioned to perform a notarial act by the commissioning officer or agency].
20. The term "principal" has the meaning given that term in [Add reference to existing definition in state law].
21. The term "record" has the meaning given that term in [Add reference to existing definition in state law] or [Utilize Uniform Law Commission definition: “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form].
22. The term "requirement" includes a duty, a standard of care, or a prohibition.
23. The term "simultaneously "means substantially simultaneously and without unreasonable interruption or disconnection but includes reasonably short delays inherent or common in the method of communication.
24. The term "stamp or seal of office" means an image containing information as specified under the law of the State in which a notary public is commissioned, which is used by the notary public to authenticate the notarization of a record, and which may consist of a physical image or impression affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.
25. The term "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, every territory or possession subject to the jurisdiction of the United States, and every federally recognized Indian tribe, and includes any executive, legislative, or judicial agency, court, department, board, office, clerk, recorder, register, commission, authority, institution, or instrumentality and any county, municipality, or other political subdivision thereof.
26. Any notarial act that has been performed remotely by a notary public licensed to perform remote online notarizations under the laws of another state, commonwealth, territory, district or possession of the United States shall have the same force and effect under the laws of the State of …STATE…., as if performed by a notarial officer of the State of …STATE….
27. That all departments, commissions, agencies, institutions, and boards of the State of …STATE…, political subdivisions thereof, counties, municipalities and school districts are authorized to cooperate in actions and measures taken in response to COVID-19 during the State of Emergency.