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Guidance for Notaries Seeking to Perform Remote Online Notarial Acts

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Remote online notarization is new to Wisconsin and to most other states, and it is subject to several legal safeguards to help ensure that the notarial acts are accurate, authentic, adequately preserved, and tamper-evident. This guidance document is intended to assist notaries in understanding and complying with those requirements.

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PART 1
OVERVIEW AND GENERAL REQUIREMENTS

§ 1.1 What law governs remote online notarization in Wisconsin?

Remote online notarization is governed by [Chapter 140](#) of the Wisconsin Statutes, namely sections [140.145](#) and [140.20](#). These statutes were created by [2019 Wisconsin Act 125](#), which Governor Tony Evers signed into law on March 3, 2020.

§ 1.2 Can all types of notarial acts be performed remotely?

No. While many notarial acts can be performed remotely, Wisconsin law does not authorize notaries to perform remote online notarial acts relating to any of the following:

- The creation and execution of wills, codicils, or testamentary trusts.
- The creation and execution of living trusts or trust amendments for personal use.
- The creation and execution of powers of attorney, declarations to physicians (living wills), and authorizations for use and disclosure of protected health care information.
- The creation and execution of marital property agreements.
- The administration of an oath before a witness at a deposition.
- Notarial acts for individuals located outside the United States, unless the record that is the subject of the notarial act concerns property located within the U.S., a transaction substantially connected to the U.S., or a matter before a public official, court, governmental entity, or other entity subject to U.S. jurisdiction.¹

¹ In addition, the individual must not be prohibited from remotely making the statement or signing the record under the law of the foreign state where the individual is located.

§ 1.3 Are the steps and requirements for remote online notarization the same as those for in-person notarization?

No. Along with the general requirements applicable to all notarial acts, Wisconsin law imposes several additional requirements for notarial acts performed remotely that do not apply to notarial acts performed in person. The notary is responsible for ensuring that all requirements are met when performing a remote online notarial act.

§ 1.4 What additional requirements apply to notarial acts performed remotely?

Under Wisconsin law, a notary performing notarial acts for remotely located individuals must do all the following:

- Utilize technology that allows the notary and the remotely located individual to **communicate with each other simultaneously by sight and sound.**²
- Utilize technology that allows the notary to confirm that the record before the notary is **the same record** in which the remotely located individual made a statement or executed a signature.
- Ensure that the technologies are **tamper-evident**, such that any change to a record generates evidence of the change.
- Perform two acceptable types of **identity proofing** for those notarial acts that require it (see §§ 1.6 to 1.8 for further details on identity proofing and when it is required).
- Capture an **audio-visual recording** of the performance of the notarial act, which the notary or the notary's agent must **retain for at least seven years** (see § 1.9 for further details on recording and retention requirements).
- Only utilize technologies that are **approved for use by the Wisconsin Department of Financial Institutions and Remote Notary Council** (see §§ 2.1 to 3.6 for further details on approved technology providers and the provider approval process).

In addition, the **notarial certificate must include the following statement:** “This notarial act involved the use of communication technology.”

§ 1.5 Do notaries need to obtain any special commissions or licenses from the state to perform remote online notarizations?

No. While one must be a commissioned Wisconsin notary public to perform remote online notarizations, no further commissions or licenses are required. A notary must, however, follow

² If the remotely located individual has a vision, hearing, or speech impairment, the communication technology may facilitate communication by alternative means that allows for real-time interaction between the notary and the remotely located individual.

the requirements set forth in this document and use approved technologies when performing remote online notarial acts (see §§ 2.1 to 2.6).

§ 1.6 What is meant by “identity proofing”? How is it different than identity verification when performing notarial acts in person?

“Identity proofing” means a process or service provided by a third party that gives a notary the means to verify the identity of a remotely located individual using public or private data sources. Except under the circumstances described in § 1.8 below, a notary must confirm an individual’s identity using two different types of identity proofing before performing a remote online notarization.

These identity proofing requirements are more thorough than identity verification for in-person notarial acts, which requires only one form of verification (visual inspection of a government-issued passport, license, or other photo ID) with no third-party confirmation.

§ 1.7 What types of identity proofing are acceptable for remote online notarizations?

The Department of Financial Institutions has issued guidance (available [here](#)) on the types of identity proofing that are acceptable for purposes of meeting Wisconsin legal requirements. As explained in that guidance, the Remote Notary Council and the Department have thus far approved two types of identity proofing: (1) credential analysis of government-issued identification, which utilizes technology to confirm the validity of the credential and allows for visual comparison by the notary; and (2) dynamic knowledge-based authentication, which requires the remotely located individual to correctly answer biographical questions drawn from public or private data sources.

§ 1.8 Is identity proofing always required when performing a remote online notarial act?

No. Identity proofing is not required if the individual appearing before the notary (whether remote or in-person) is personally known to the notary through dealings sufficient to provide the notary with reasonable certainty that the individual has the identity claimed. The Department of Financial Institutions has issued guidance (available [here](#)) to help notaries evaluate whether their dealings with an individual are sufficient to provide the required level of certainty.

§ 1.9 What are the recording and retention requirements for remote online notarizations? Can notaries utilize technology providers to retain the recordings?

For remote online notarizations, Wisconsin law requires a notary to create an audio-video recording of the performance of the notarial act and to retain that recording for at least seven years. This is a safeguard to reduce the risk of fraud or mistake and to help resolve any later disputes over whether and how a remote online notarial act occurred.

Notaries can meet the retention requirements either by personally retaining the recordings or by arranging for them to be retained in a repository where they can later retrieve them. Many technology providers perform retention services for those notaries who utilize their platforms to perform remote online notarial acts. Notaries should inquire with their technology providers for information on how and whether recordings are stored by the provider, for how long, and how

those files may later be accessed and retrieved by the notary. Even though technology providers or other agents may provide a repository for retaining records on the notary's behalf, the notary is ultimately responsible for ensuring compliance with the recording and seven-year retention requirements.

§ 1.10 Are notaries and communication technology providers subject to confidentiality requirements?

Yes. Notaries and providers of communication technology used for remote online notarization must keep confidential all documents and information provided to them in the course of performing their duties. They may disclose the documents or information only (1) with the separate written consent of the person who requested their services, or (2) as necessary to comply with a subpoena, court order, or request from a regulatory or supervisory agency.³

§ 1.11 Can notaries perform remote online notarizations from anywhere?

No. The law does not authorize Wisconsin notaries to perform notarial acts (whether remote or in-person) while located outside the state.

§ 1.12 If the notary is located in Wisconsin and the individual is located in another state or country, where does the law consider the notarial act to be performed?

For purposes of determining the jurisdiction in which a notarial act is performed for remotely located individual, the location of the notary is determinative. Note that remote online notarizations may only be performed for individuals outside the United States if the record that is the subject of the notarial act concerns property, transactions, or proceedings within the United States (see § 1.2 for the specific requirements for notarizations for individuals located in foreign countries).

PART 2:
WORKING WITH APPROVED TECHNOLOGY PROVIDERS

§ 2.1 Can notaries use unapproved technologies to perform remote online notarial acts?

No. Under Wisconsin law, a notary may only utilize technologies that meet state statutory requirements and the standards of the state's Remote Notary Council and Department of Financial Institutions. A Wisconsin notary may not perform remote online notarizations using an unapproved technology.

³ In addition, a notary public or provider of communication technology may release deposition transcriptions to all parties of record in an action.

§ 2.2 What technologies have been approved for use by Wisconsin notaries?

The Department of Financial Institutions maintains a list of technology providers that have been approved for use by Wisconsin notaries in performing remote online notarizations. The list, which is available [here](#), is updated as new providers are approved.

§ 2.3 Are there any differences between the approved technology providers?

Yes. While all approved providers must be willing and able to meet the conditions established by the Remote Notary Council and the Department of Financial Institutions, their business models and service offerings vary widely. Some providers are presently geared toward certain sectors or transactions requiring notarizations (such as real estate closings), while others are designed to accommodate a broader array of notarial acts. Some retain recordings on the notary's behalf for the full seven years, while others may require the notary to download and retain the recordings themselves. The providers also use different fee structures to support their operations, and some providers make their services available only to organizations rather than individual notaries.

The Department's list of approved technology providers includes links to the providers' websites, where notaries can review the providers' services and contact them with further questions to help determine which best meets their needs. Note that title insurers or others with an interest in certain types of notarized transactions may have their own lists of acceptable or preferred technology providers. A notary who perform these types of transactions should confirm that their chosen provider is acceptable to these third parties, as well.

§ 2.4 How does a notary sign up and become trained to use an approved technology?

Once a notary has identified a suitable technology provider, the notary should contact the provider for information on whether, how, and under what terms it is enrolling new Wisconsin notaries on its platform. Each approved provider has an onboarding process for new users to learn how to perform notarial acts using the provider's technology. Notaries should not perform remote online notarizations until they have been trained on (and feel comfortable using) their chosen technologies.

§ 2.5 How does the public know whether a notary is authorized to perform remote online notarizations?

Each approved technology provider is required to notify the Department of Financial Institutions when a Wisconsin notary completes training and becomes authorized to use its platform. The notary search will show the notary as a RON once the provider updates their list. You can search the list [here](#) to see if you are now indicated as a RON in Wisconsin.

After completing training, notaries should check to confirm that they have been added to the list of Wisconsin notaries authorized to perform remote online notarizations. If a notary's name does not appear within 14 days of completing training with an approved technology provider, the notary should contact the provider and ask them to get the information updated.

§ 2.6 Can notaries change technology providers, or become authorized to use multiple providers?

Yes. Notaries are free to change technology providers or to utilize more than one approved provider at a time. The notary must, however, complete the onboarding and training process with each approved provider used.

PART 3: **THE APPLICATION AND APPROVAL PROCESS FOR TECHNOLOGY PROVIDERS**

§ 3.1 How does one obtain approval of a technology for use in performing remote online notarizations in Wisconsin?

Providers of technology used to perform remote online notarizations may apply for approval with the Department of Financial Institutions. The application form (available [here](#)) asks the provider to describe its proposed methods of performing remote online notarizations, its experience and track record, and several other questions related to the provider's ability to carry out its responsibilities and meet the standards required of communication technology providers under Wisconsin law.

§ 3.2 How are applications reviewed?

After it receives a completed application from a technology provider, the Department of Financial Institutions provides the application for review at a meeting of the Remote Notary Council. The Department or Council may require representatives of the provider to appear at the meeting to give additional context and answer further questions regarding its application and technology.

§ 3.3 What is the Remote Notary Council?

The Remote Notary Council is a five-member body created by [2019 Wisconsin Act 125](#), consisting of one member who represents an association of title insurance companies, one who represents attorneys who practice real estate law, one who represents an association of bankers, one who represents the Department of Financial Institutions, and one who represents communication technology providers.

§ 3.4 How are technology provider approvals granted?

The Remote Notary Council may authorize approval of a provider of technology by a majority vote of eligible voting members.⁴ Once the Council has authorized approval, the Department of Financial Institutions will notify the provider and send the required conditions the provider must meet to maintain approval. The provider will be added to approved list after it returns its signed agreement to those conditions.

§ 3.5 What conditions must a technology provider meet to maintain its approved status?

Among other conditions, an approved provider must do all of the following:

- Continue to provide technology that complies (and facilitates notaries' compliance) with Wisconsin law.
- Update the Department of Financial Institutions at least weekly regarding Wisconsin notaries who have become authorized, or are no longer authorized, to use the provider's technology.
- Inform the Department if any material information previously provided to the Department or the Remote Notary Council changes or becomes inaccurate.
- Cooperate with all information or investigative requests by the Department.
- Immediately notify the Department if the provider suffers a data breach affecting Wisconsin residents.
- Should the provider later cease offering its technologies to Wisconsin notaries, take several steps to avoid data loss and inform Wisconsin notaries who are using the platform.

The full conditions for each provider will be set forth in the conditional approval form presented by the Department to the technology provider for signature. A provider's failure to comply with these conditions may result in revocation of the provider's approval for use by Wisconsin notaries in performing remote online notarizations.

§ 3.6 How long does a technology provider's approval last?

Each year, providers are required to renew their acceptance of the conditions for approval and to re-certify that their communication technologies comply (and facilitate compliance) with Wisconsin law. A form for that purpose is available [here](#).

Approvals may be revoked at any time for failure to meet the conditions of approval. In addition, the Department may from time to time require a provider to re-apply for approval and review by the Remote Notary Council, regardless of whether any violations have occurred.

⁴ To avoid potential conflicts of interest, the member who represents communication technology providers does not vote on the approval or disapproval of other communication technology providers.