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Guidance for Notaries Seeking to Perform Notarial Acts for Remotely Located Individuals

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Wisconsin permits notaries to perform notarial acts for remotely located individuals, subject to several legal safeguards to help ensure the integrity of the notarial process. This guidance document is intended to assist notaries in understanding and complying with those requirements.

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PART 1: OVERVIEW

§ 1.1 What statutes and rules govern remote notarization in Wisconsin?

Remote notarization is governed by [Chapter 140](#) of the Wisconsin Statutes—namely sections [140.145](#), [140.147](#), and [140.20](#)—as well as [chapter DFI-CCS 25](#) of the Wisconsin Administrative Code. Sections 140.145 and 140.20 and chapter DFI-CCS 25 govern most types of notarial acts for remotely located individuals, while section 140.147 sets forth special requirements for remote notarization of estate planning documents.

§ 1.2 Do notaries need to obtain any special commissions or licenses from the state to perform notarial acts for remotely located individuals?

No. While one must be a commissioned Wisconsin notary public to perform notarial acts in this state for remotely located individuals, no further commissions or licenses are required. A notary must, however, comply with the applicable requirements under Wisconsin law when performing notarial acts for remotely located individuals, which are summarized in this document.

§ 1.3 Are the requirements for notarial acts performed for remotely located individuals the same as those for notarial acts performed in-person?

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 notarial act for a remotely located individual.

§ 1.4 Are the procedures for remote notarization of estate planning documents the same as the procedures for remote notarization of other kinds of documents?

No. The legal requirements for remote notarization of estate planning documents are materially different than the requirements for other notarial acts performed remotely. The requirements for remote notarization of estate planning documents are addressed in **Part 3** of this guidance, while the requirements for other notarial acts performed for remotely located individuals are addressed in **Part 2**.

PART 2: REQUIREMENTS APPLICABLE TO MOST NOTARIAL ACTS FOR REMOTELY LOCATED INDIVIDUALS (EXCEPT FOR NOTARIZATION OF ESTATE PLANNING DOCUMENTS)

Part 2A: Scope and General Requirements

§ 2A.1 What types of notarial acts are (and are not) addressed in this Part?

Parts 2A, 2B, and 2C of this Guidance explain the requirements for most types of notarial acts performed for remotely located individuals, a process commonly referred to as “remote online

notarization” or “RON.” Note that these requirements are not applicable to notarial acts relating to any of the following:

● **Estate planning documents.** Parts 2A, 2B, and 2C do not address notarial acts relating to:

- 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, except for limited financial powers of attorney for real estate transactions.
- Declarations to physicians (living wills) and authorizations for use and disclosure of protected health care information.
- The creation and execution of marital property agreements.

Notarial acts relating to these types of documents may only be performed remotely by utilizing the procedures set forth in Part 3 of this Guidance.

● **The administration of an oath before a witness at a deposition.** The administration of oaths to remotely located deposition witnesses is governed by [section 804.03\(4\)](#) of the Wisconsin Rules of Civil Procedure, which has different requirements.

● **Notarial acts for individuals located outside the United States, except under limited circumstances.** Wisconsin notaries may not perform 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 United States, a transaction substantially connected to the United States, or a matter before a public official, court, governmental entity, or other entity subject to U.S. jurisdiction.¹

§ 2A.2 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

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.

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.

- 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 §§ 2A.3 to 2A.5 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 § 2A.6 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 Parts 2B and 2C 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.”

§ 2A.3 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 § 2A.5 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.

§ 2A.4 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.

§ 2A.5 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.

§ 2A.6 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.

§ 2A.7 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

§ 2A.8 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.

§ 2A.9 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

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

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 2B: Working With Approved Technology Providers

§ 2B.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.

§ 2B.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.

§ 2B.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.

§ 2B.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.

§ 2B.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. After it sends that notification, the Department's [public notary database](#) will be updated to indicate that the notary is a "remote online notary" authorized to perform remote notarial acts using an approved communication technology.

After completing training, a notary should check the database to confirm that their chosen technology provider has notified the Department that they are now authorized to perform remote online notarizations. If a notary's profile is not updated to indicate that they are a "remote online notary" within 14 days of completing training with an approved technology provider, the notary should contact the provider and ask them to send the necessary notification to the Department.

§ 2B.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 2C: The Application and Approval Process for Technology Providers

§ 2C.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.

§ 2C.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.

§ 2C.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.

§ 2C.4 How are technology provider approvals granted?

The Remote Notary Council may authorize approval of a technology provider 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.

§ 2C.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 are 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.

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.

§ 2C.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.

PART 3: REQUIREMENTS APPLICABLE TO REMOTE NOTARIZATION OF ESTATE PLANNING DOCUMENTS

§ 3.1 What types of notarial acts are (and are not) addressed in this Part?

Part 3 of this Guidance explains the special requirements for remote notarization of **estate planning documents**, a term that includes all the following:

- A will or codicil.
- A document creating a trust (such as a declaration of trust) or an amendment thereto.
- A certification of trust.
- A document exercising a power of appointment under a will, trust agreement, or other creating instrument.
- A power of attorney for finances and property.
- A power of attorney for health care.
- A declaration to a health care professional, an authorization for use and disclosure of protected health information, or an authorization for final disposition.
- A marital property agreement or an amendment thereto.
- A document evidencing a nonprobate transfer at death.
- A disclaimer of transfers at death.

Remote notarial acts relating to these estate planning documents must be performed by utilizing the procedures set forth in [section 140.147 of the Wisconsin Statutes](#), which are summarized in §§ 3.2 and 3.3 below. These procedures do not apply to remote notarial acts relating to other types of documents, which are addressed in Part 2.

§ 3.2 What additional requirements apply to remote notarization of estate planning documents?

The requirements for remote notarial acts relating to estate planning documents are substantially different than the requirements for other remote notarial acts. Under Wisconsin law, a notary performing notarial acts relating to the remote execution of estate planning documents must do all the following:

- Ensure that the signing is **supervised by a Wisconsin-licensed attorney** in good standing. The supervising attorney may serve as the notary public.
- Utilize audiovisual communication technology that allows the notary, the supervising attorney, the remotely located individual, and any remote witnesses to **see, hear, and communicate in an interactive way in real time.**⁵ Unlike other remote notarial acts, remote notarization of estate planning documents does not require the notary to use a communication technology provider that has been approved by the Remote Notary Council through the process described in Part 2C of this Guidance.
- During the communication, **attest that the notary is physically located in Wisconsin.**
- **Confirm the identity** of the remotely located individual, either through personal knowledge (see § 2A.5 or the Department’s [guidance on this subject](#)) or a government-issued credential (a passport, driver’s license, government identification card, or other form of government identification that contains the signature or photograph of the individual, is no more than three years expired, and is satisfactory to the notary).
- Ensure that **the estate planning document indicates that it is being executed pursuant to section 140.147** of the Wisconsin Statutes.
- During the communication, **ensure that the remotely located individual does all the following:**
 - Attests to being physically located in Wisconsin. While other types of remote notarial acts may be performed for individuals located outside the state (see § 2A.1 of this guidance), remote notarization of estate planning documents may only be performed for individuals who are physically located in Wisconsin during the signing.

⁵ If the remotely located individual, the notary, or the supervising attorney has a vision, hearing, or speech impairment, assistive technology may be substituted for audio or video if it enables that person to actively participate in the signing in real time.

- Identifies anyone else present in the individual’s physical location, providing a visual sweep of their surroundings if possible.
 - Displays the estate planning document, confirming the total number of pages and the page number on which the individual’s signature will appear.
 - Declares that the individual is 18 years of age or older, that the document is the individual’s estate planning document, and that the document is being executed as a voluntary act.
 - Signs the estate planning document in a manner that allows the notary and the supervising attorney to see the signing.⁶
- After the communication, **notarize** either (1) an identical copy of the original, unsigned estate planning document; (2) a copy of the signed estate planning document, if the signed copy is forwarded to the notary by the individual or the supervising attorney; or (3) the original signed estate planning document, if it is forwarded to the notary by the supervising attorney. The **notarial certificate** may be in the following short form:

State of

County of

This record was virtually acknowledged before me pursuant to Wis. Stat. § 140.147 on [date] by [name(s) of individual(s)].

.... [Signature of notarial officer]

Stamp

.... [Title of office]

[My commission expires:]

- **Send the notarized estate planning document to the supervising attorney, who retains the signed original and any notarized copy.**⁷

The supervising attorney must then complete an **affidavit of compliance**, which is discussed in the next section.

⁶ The document may be signed on behalf of the remotely located individual by an authorized individual 18 years of older, if that individual signs at the express direction and in the physical presence of the remotely located individual.

⁷ Pursuant to 140.147(3)(j)2. and 3., the signed original estate planning document and the notarized copy together constitute a single document.

§ 3.3 What is an affidavit of compliance? Is there a required form?

An affidavit of compliance serves as the supervising attorney's confirmation that the remote notarization complied with each of the requirements of section 140.147 of the Wisconsin Statutes. Section 140.147(5) states that the affidavit of compliance must be in substantially the form that appears below.

Other provisions of law relating to the execution of certain kinds of estate planning documents may require the supervising attorney to complete a different affidavit containing statements or information not addressed in the affidavit of compliance. In that event, section 140.147(6) allows the supervising attorney to combine all the information required under both provisions of law in a single affidavit.

AFFIDAVIT OF COMPLIANCE

State of

County of

The undersigned, being first duly sworn under oath, states as follows:

This Affidavit of Compliance is executed pursuant to Wis. Stat. § 140.147 to document the signing of the [name of estate planning document] of [name of remotely located individual] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the remotely located individual is
2. The name and [residential or business] address of the notary public is
3. The address within the state of Wisconsin where the remotely located individual was physically located at the time the remotely located individual signed the estate planning document is
4. The address within the state of Wisconsin where the notary public was physically located at the time the notary public witnessed the remotely located individual's signing of the estate planning document is
5. The remotely located individual and notary public were known to each other and to the supervising attorney. - OR - The remotely located individual and notary public were not known to each other and to the supervising attorney. The remotely located individual produced the following form of photo identification to confirm his or her identity:
.....

6. The following persons were in the same physical location as the remotely located individual during the signing:
.....

7. The remotely located individual declared that the remotely located individual is 18 years of age or older, that the document is the remotely located individual's [name of estate planning document], and that the document was being executed as the remotely located individual's voluntary act.

8. The notary public and the supervising attorney were able to see the remotely located individual sign or another individual on behalf of the remotely located individual sign. The remotely located individual appeared to be 18 years of age or older and acting voluntarily.

9. The audiovisual technology used for the signing process was

10. The estate planning document was not signed in counterpart. The following methods were used to forward the estate planning document to the notary public and to the supervising attorney after signing. - OR - The estate planning document was signed in counterpart. The following methods were used to forward each counterpart to the supervising attorney. [If applicable] - The supervising attorney physically compiled the signed paper counterparts into a single document containing the estate planning document, the signature of the remotely located individual, and the notarial act on [date] by [e.g., attaching page 7 from each counterpart signed by the notary public to the back of the estate planning document signed by the remotely located individual].

11. The name, state bar number, and [business or residential] address of the supervising attorney is

12. [Optional] Other information that the supervising attorney considers to be material is as follows:

.... (signature of supervising attorney)

Subscribed and sworn to before me on (date) by (name of supervising attorney).

.... (signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]