

Changes to Notary Law Effective 10/1/2020

The information provided in this summary is not legal advice. This page is intended to provide a summary of some upcoming changes to Maryland notary law. It is not meant to be a comprehensive set of guidance on the new law. You should review the full set of changes to notary law at the link provided below. More content on implementation of the new notary law will be posted on this website in the coming months as the effective date nears.

The requirements of remote notarizations, as allowed in this new law effective October 1, 2020, are different than those that are currently allowed under the Governor's Order temporarily allowing remote notarizations during the COVID-19 state of emergency. Remote notarizations using technology primarily intended for video conferencing (such as Skype, Microsoft Teams, Google Meet, etc.) are not allowed under this new law.

Remote notary notification forms submitted during the COVID-19 state of emergency do not authorize a notary public to perform remote notarizations under this new law. A new remote notary notification form will be required.

Before a notary public performs their initial remote notarial act under the new law effective October 1, 2020, the notary public shall notify the Secretary of State that the notary public will be performing notarial acts facilitated by communication technology; and of the technologies the notary public intends to use. The Secretary of State will create a notification form to be submitted by the notary public to the Secretary of State to fulfill this requirement. More information on the requirements of remote notarizations can be found in Sections 18-214, 18-220, and 18-223. Further information on allowed remote notary technology vendors will be available as we approach October 1, 2020.

A link to the full text of Senate Bill 0678, passed during the 2019 Legislative Session can be found at this link: http://mgaleg.maryland.gov/2019RS/Chapters_noln/CH_407_sb0678e.pdf.

Recordkeeping (Section 18-219): The new law enhances the recordkeeping requirements of notaries public. The term used in the new law for a notary's record is "journal". The notary's record was previously referred to as a "fair register". Section 18-219 of the new law will require:

- Details of each notarial act performed by the notary public including, but not limited to:
 - o the date and time of the notarial act,
 - o description of the record presented for notarization,
 - o name and address of the individuals for whom the notarial act is being performed;
 - o how the individual were identified;
 - o and the fee charged
- how the records must be stored; and
- for how long the records must be stored (10 years from the last entry in your journal).

Identification of a signer (Sections 18-206): A notary public must satisfactorily identify the person requesting a notarial act before performing the notarial act. This law provides a few options for identifying a signer, as follows:

- personal knowledge

- government-issued photo identification including driver's license, passport, consular identification or government-issued nondriver identification card; or
- credible witness

Competency 18-207: The new law empowers a notary public to refuse to perform a notarial act if the notary is not satisfied that the individual executing the record is competent or has the capacity to execute the record or is not satisfied that the individual's signature is knowingly and voluntarily made (Section 18-207).

Types of Notarial Acts and Notarial Certificates (Sections 18-204, 18-215, 18-216): This new law defines six (6) types of notarial acts performed by notaries public, and alters requirements for performing each of the following notarial acts:

- acknowledgment;
- verification on oath or affirmation of a statement;
- witness or attest to a signature;
- certify or attest a copy of a record;
- certify a tangible copy of an electronic record; and
- protest of a negotiable instrument.

The new law will require each notarial act to have a notarial certificate. Details on performance requirements for each act can be found in Section 18-204. Requirements for affixing notarial certificates are found in Sections 18-215 and 18-216.

Remote Notarizations (Sections 18-214, 18-220, 18-223): The new law legalizes notarial acts using communication technology for a remotely located individual. These notarial acts are better known as remote notarizations or remote online notarizations.

Under the new law, remote notarizations cannot be performed with respect to a will as defined in Section 1-101 of the Estates and Trusts Article, Annotated Code of Maryland or a trust instrument as defined in Section 14.5-103 of the Estates and Trusts Article, Annotated Code of Maryland.

Section 18-214 of the new law allows a notary public to perform a remote notarial act if the notary public can identify the remotely located individual one of three ways:

- (1) has personal knowledge of the identity of the remotely located individual;
- (2) has satisfactory evidence of the identity of the remotely located individual by verification on oath or affirmation from a credible witness appearing before and identified by the notary public under Section 18-206(b) or as a remotely located individual; or
- (3) has obtained satisfactory evidence of the identity of the remotely located individual by:
 - o Remote presentation of an identification credential described in Section 18-206(b)
 - o Credential analysis of the identification credential; and
 - o Identity proofing of the individual.

Section 18-223 of the new law outlines requirements for knowledge-based identify proofing, credential analysis of an identification credential, and using secure communications technology.