

What You Need To Know About NJ's Temporary, Remote Notary Law

A new law permits a notarial act to be performed using technology to communicate by sight and sound with a remotely located individual.

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For the duration of the COVID-19 public health emergency declared by Governor Phil Murphy, notaries public and persons authorized to take oaths (hereinafter referred to as a notary or notaries) will be permitted to perform their jobs remotely in certain circumstances in New Jersey.

The new law, P.L. 2020, c.26, is part of a package of bills designed to help cope with the impact of the virus outbreak. With people working from home and practicing social distancing, the law allows oaths, affirmations and affidavits to be taken without endangering the participants' health. It passed the Legislature as A-3903/S-2336.

The measure took effect immediately when signed by Gov. Murphy on April 14. It permits a notarial act to be performed using communication technology—an electronic device or process—to communicate by sight and sound with a remotely located individual.

Typical permitted actions include taking an acknowledgment on an affidavit, administering an oath or affirmation, executing jurats or other verifications, taking a proof of deed, or executing protests for non-payment.

Current law does not permit remote notarial acts, and use of communication technology to perform a notarial act pursuant to P.L 2020, c. 26, is not available in every situation.

For example, under the new law, acts covered under the Uniform Commercial Code, other than for Sections 1-107 and 1-206, Article 2 and Article 2A, cannot use remote

notarial acts. Finally, documents that are otherwise controlled by “statute, regulation or other rule” in family law matters, including, but not limited to adoption and divorce, cannot rely on remote notarial acts.

If the notarial act is not precluded, six steps must be taken.

Step One

The notary must connect through sight as well as sound via communication technology with the remotely located affiant.

Step Two

The notary must confirm the identity of the remotely located affiant. This confirmation can be done three different ways—if the notary can verify the remote affiant.

- *Personal Knowledge.* The first method is used if the notary or person authorized to take oaths has personal knowledge of the identity of the remotely located affiant appearing before them using communication technology. Under this method, the notary’s knowledge of the affiant must be based on past dealings where the notary would have reasonable certainty that the affiant is who they claim to be. This method should be used when the notary knows the affiant, or has worked with or has interacted with the affiant in the past. A form of acknowledgment for use under this circumstance is as follows. P.L. 2020, c. 26 (A-3903) ¶ 1(b)(1)(a).

On _____, 20____ before me, _____ , Notary Public in and for said county, _____ (signer) appeared before me using communication technology and has/have satisfactorily identified him/her/themselves as the signer(s) to the above referenced document. I have been able to confirm his/her/their identity(ies) by having personal knowledge of the individual appearing before me based upon past dealings. I have confirmed that the record before me is the same record in which_____ (signer) made a statement or signed. I, or _____ who was acting on my behalf, have

recorded the notarial act. It will be stored at _____ for a period of ten (10) years following the date of the notarial act pursuant to the requirements of P.L. 2020, c. 26 (A-3903) ¶ 1(f).

- *Credible Witness.* The second method is used if the notary does not know the remotely located affiant. In this case, the notary must obtain satisfactory evidence of the identity of the affiant by oath or affirmation from a credible witness *who must personally appear before the notary.* The notary must know this witness, or be able to confirm their identity by looking at a passport, driver’s license or a current government-issued identification card, or one that has not been expired for more than three years. A form of acknowledgment for use under this circumstance is below. P.L. 2020, c. 26 (A-3903) ¶ 1(b)(1)(b).

On _____, 20____ before me, _____ , Notary Public in and for said county, _____ (signer) appeared before me using communication technology and has/have satisfactorily identified him/her/themselves as the signer(s) to the above referenced document. I have been able to confirm his/her/their identity(ies) by satisfactory evidence of the identity of _____ (signer) by oath or affirmation from a credible witness, _____, appearing before me. I have confirmed that the record before me is the same record in which _____ (signer) made a statement or signed. I, or _____ who was acting on my behalf, have recorded the notarial act. It will be stored at _____ for a period of ten (10) years following the date of the notarial act pursuant to the requirements of P.L. 2020, c. 26 (A-3903) ¶ 1(f).

- *Identity Proofing.* The third method requires the notary to obtain satisfactory evidence of the identity of the remotely located individual by using at least two different types of “identity proofing.” Identity proofing is the process by which a third party provides the notary with a means to verify the remotely located affiant by a review of personal information from public or private sources.

This means that the remotely located affiant can provide the documents using a service, such as e-mail, mail, hand delivery or other form of communication technology, to send his or her identity-verification information to the notary.

The notary must make sure he or she receives two forms of satisfactory evidence of the remotely located affiant—such as a passport, driver’s license, or current government-issued identification card or one that has not been expired for more than three years. A form of acknowledgment for use under this circumstance is below. P.L. 2020, c. 26 (A-3903) ¶ 1(b)(1)(c).

On _____, 20____ before me, _____ , Notary Public in and for said county, _____ (signer) appeared before me using communication technology and has/have satisfactorily identified him/her/themselves as the signer(s) to the above referenced document. I have been able to confirm his/her/their identity(ies) by obtaining satisfactory evidence of the identity of _____ (signer) using the following types of identity proofing: _____ (at least 2; examples would be driver’s license and passport). I have confirmed that the record before me is the same record in which _____ (signer) made a statement or signed. I, or _____ who was acting on my behalf, have recorded the notarial act. It will be stored at _____ for a period of ten (10) years following the date of the notarial act pursuant to the requirements of P.L. 2020, c. 26 (A-3903) ¶ 1(f).

Step Three

Confirm that the record before the notary is the same record in which the remotely located affiant made a statement or executed with a signature. If the notary does not believe it is the same record, the notary should stop until he or she has the correct record.

Step Four

Prepare a recording of the notarial act. Once the notary confirms the identity of the remotely located affiant and confirms the subject record, the notary, or someone acting on his or her behalf, must use a recording device to create an audio-visual recording of the notarial act. This means that an audio-visual recording must be made of the affiant signing the document as well as the notary taking proof of the affiant's identity, administering an oath and signing as the notary.

Step Five

Make note of the use of the communication technology in the certificate and name affixation. As part of the certificate and name affixation, the notary must also include language stating that the notarial act was performed using communication technology.

Step Six

Save the audio-visual recording for at least 10 years after the recording is made. The recording must be saved in a manner in which it will not be destroyed for 10 years.

It is important to note that this is not a permanent change in how documents can be notarized. The final sentence of the law states that it "shall expire upon rescission of Executive Order No. 103 of 2020." Governor Murphy declared the Public Health Emergency and State of Emergency on March 9.

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