



WSSFC 2024

Technology Track – Session 6

E-Signature Technology and Remote Witnessing and Notarization Under Wis. Stat. 140.147 and 140.145

Presenters:

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About the Presenters...

Cherly (Cheri) A. Hipenbecker is General Counsel with the Knight Barry Title Group. She received her undergraduate degree from the Winona State University in Political Science, and her law degree from University of Minnesota magna cum laude. After graduation, Cheri worked with the law firm of Hostak, Henzl & Bichler in Racine before joining Knight Barry Title in 2007. Cheri is a past president of the Wisconsin Land Title Association (WLTA), current Legislative Chair of the WLTA and current member of the Town of Norway Planning Commission & Land Use Committee.

Brent J. Hoeft is the Practice Management Advisor for the State Bar of Wisconsin's Practice411™ Practice Management Program. He guides State Bar members on increasing law practice productivity and efficiency and advises on all things law practice management, including legal technology, information security and privacy practices, technology competence, employee management, policy and systems implementation, business development and marketing, and improving client relationship management. Prior to his time at the State Bar, Brent was in private practice since 2006. In 2010, he founded Hoeft Law LLC, Wisconsin's first completely web-based virtual law firm providing legal services in business law, cybersecurity & privacy, and estate planning. Brent also founded FirmLock Consulting, LLC, a cybersecurity behavior consulting firm focusing on assisting solo and small law firms with cybersecurity training, education, and implementation of policies and procedures to better protect law firm data. Brent graduated from Cleveland State University College of Law (J.D., 2006) and University of Wisconsin-Eau Claire (B.A., Psychology, 2002). He lives in the Madison area with his family, where he enjoys mountain biking, camping, photography, and all things Wisconsin sports.

Catherine M. Priebe is the co-founder of Certus Legal Group, Ltd., a boutique estate planning and business succession planning law firm with offices in Milwaukee and Madison. Ms. Priebe has extensive experience advising clients in all aspects of estate planning, business succession planning, gifting strategies, marital property issues, and probate and trust administration. She received her undergraduate degree, magna cum laude, from Marquette University and her law degree, cum laude, from the University of Wisconsin Law School. Ms. Priebe has received the Accredited Estate Planner® designation from the National Association of Estate Planners & Councils. Ms. Priebe is a frequent lecturer on estate planning, including continuing legal education courses for the State Bar of Wisconsin. She has also instructed the Estate Planning and Probate section of the Lawyering Skills Course at the University of Wisconsin Law School. Ms. Priebe is a fellow of the American College of Trust and Estate Counsel, Past Chairperson and Ex-Officio Member of the State Bar of Wisconsin Real Property, Probate & Trust Law Section Board of Directors, Past President of the Milwaukee Estate Planning Forum, and the former Vice Chair of the Milwaukee Bar Association's Estates and Trusts Section. She formerly co-chaired the State Bar of Wisconsin Remote Practice Committee and is also a member of the State Bar of Wisconsin and Wisconsin Bankers Association Joint Uniform Trust Code Study Group, Milwaukee Mid-Winter Estate Planning Clinic and Milwaukee Estate Planning Association, as well as Past President of the Association for Women Lawyers and the Association for Women Lawyers Foundation. Ms. Priebe is recognized as a Wisconsin Super Lawyer by Law & Politics Magazine and has consistently been included in the Trusts and Estates Section of Best Lawyers in America. She is very honored to have been selected as the 2022 "Lawyer of the Year" in Trusts and Estates for Milwaukee by Best Lawyers in America. Ms. Priebe is AV Preeminent® Peer Review Rated by Martindale Hubbell. She has also been ranked in Chambers High Net Worth: Private Wealth Law since 2017.

E-Signature Technology and Remote Witnessing and Notarization

Wisconsin Solo and Small Firm Conference 2024

Wisconsin Dells

Presented by:

Cheryl A. Hipenbecker, KnightBarry Title, Inc.

Catherine M. Priebe, Certus Legal Group, Ltd.

Brent Hoeft, State Bar of Wisconsin

- I. Two primary types of electronic signatures
 - a. Electronic signature – broad term for anything electronic that is intended to indicate acceptance of an agreement or record.
 - i. Can be any “electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record” ESIGN Act 15 USC Ch. 96 §7006 (5)
 - ii. Usually not any additional security features. Just an electronic version of a physical signature.
 - b. Digital signatures
 - i. A kind of electronic signature that uses digital certificates and authentication to provide additional security and authenticity of the record.
- II. Uniform Electronic Transaction Act (UETA) 1999
 - a. Principles outlined in UETA
 - i. A record, signature, or contract cannot be denied legal effect simply because it is electronic.
 - ii. If law requires a record to be in writing or a signature, an electronic record or signature satisfies the law.
- III. US Electronic Signatures in Global and National Commerce Act (ESIGN Act) 2000
 - a. For an electronic signature to be legally binding the ESIGN Act recommends the following 5 elements:
 - i. Intent to sign
 - ii. Consent to do business electronically
 - iii. Opt-out clause
 - iv. Fully executed, signed copies to all signers
- IV. Common Electronic and Digital Signatures
 - a. Scanned signature stamp to use within Adobe Acrobat or another PDF program
 - b. [Adobe Sign](#)
 - c. [DocuSign](#)
 - d. [Dropbox Sign](#) (fka HelloSign)
 - e. Case Management Systems
 - i. [Clio](#)
 - ii. [MyCase](#)
 - iii. [PracticePanther](#)
 - iv. Note – all of these case management systems (and more available options) offer discounts to State Bar of Wisconsin members – see [Membership & Benefits \(wisbar.org\)](#).
- V. Common Uses
 - a. Representation Agreements
 - b. Acknowledgments of receipt
 - c. Certain contracts
 - d. Real Estate offer forms

**E-SIGNATURE TECHNOLOGY AND
REMOTE WITNESSING AND NOTARIZATION**

Remote Online Notarization (RON)

CHAPTER 140

NOTARIES PUBLIC; NOTARIAL ACTS

140.01	Definitions.	140.147	Notarial act performed for remote execution of estate planning documents.
140.02	Notaries.	140.15	Certificate of notarial act.
140.04	Authority to perform notarial act.	140.16	Short form certificates.
140.05	Requirements for certain notarial acts.	140.17	Official stamp.
140.06	Personal appearance required.	140.18	Stamping device.
140.07	Identification of individual.	140.20	Notification regarding performance of notarial act for remotely located individuals; selection of technology; acceptance of tangible copy of electronic record.
140.08	Authority to refuse to perform notarial act.	140.24	Database of notaries public.
140.09	Signature if individual unable to sign.	140.26	Validity of notarial acts.
140.10	Notarial act in this state.	140.27	Rules; powers of the department.
140.11	Notarial act in another state.	140.30	Uniformity of application and construction.
140.12	Notarial act under authority of federally recognized Indian tribe.	140.31	Relation to electronic signatures in global and national commerce act.
140.13	Notarial act under federal authority.	140.34	Short title.
140.14	Foreign notarial act.		
140.145	Notarial act performed for remotely located individual.		

140.01 Definitions. In this chapter:

(1) “Acknowledgment” means a declaration by an individual before a notarial officer that the individual has signed a record for the purpose stated in the record and, if the record is signed in a representative capacity, that the individual signed the record with proper authority and signed it as the act of the individual or entity identified in the record.

(2) “Department” means the department of financial institutions.

(3) “Domestic partner” has the meaning given in s. 770.01 (1).

(4) “Electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(5) “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.

(6) “In a representative capacity” means acting as any of the following:

(a) An authorized officer, agent, partner, trustee, or other representative for a person other than an individual.

(b) A public officer, personal representative, guardian, or other representative, in the capacity stated in a record.

(c) An agent or attorney-in-fact for a principal.

(d) An authorized representative of another in any other capacity.

(7) “Notarial act” means an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the law of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument.

(8) “Notarial officer” means a notary public or other individual authorized to perform a notarial act.

(9) “Notary public” means an individual commissioned to perform a notarial act.

(10) “Official stamp” means a physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

(11) “Person” means an individual, corporation, business trust, statutory trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(12) “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.

(13) “Sign” means, with present intent to authenticate or adopt a record, any of the following:

(a) To execute or adopt a tangible symbol.

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(14) “Signature” means a tangible symbol or an electronic signature that evidences the signing of a record.

(15) “Stamping device” means any of the following:

(a) A physical device capable of affixing to or embossing on a tangible record an official stamp.

(b) An electronic device or process capable of attaching to or logically associating with an electronic record an official stamp.

(16) “State” means a state of the United States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(17) “Tamper-evident” means that any change to a record generates evidence of the change.

(18) “Verification on oath or affirmation” means a declaration, made by an individual on oath or affirmation before a notarial officer, that a statement in a record is true.

History: 2019 a. 125.

140.02 Notaries. (1) NOTARIES PUBLIC WHO ARE NOT ATTORNEYS. (a) The department shall appoint notaries public who shall be United States residents and at least 18 years of age. Applicants who are not attorneys shall file an application with the department and pay a \$20 fee.

(b) The department shall satisfy itself that the applicant has the equivalent of an 8th grade education, is familiar with the duties and responsibilities of a notary public and, subject to ss. 111.321, 111.322 and 111.335, does not have an arrest or conviction record.

(c) If an application is rejected the fee shall be returned.

(d) Qualified applicants shall be notified by the department to take and file the official oath and execute and file an official bond in the sum of \$500, with a surety executed by a surety company and approved by the department.

(e) The qualified applicant shall file his or her signature, post-office address, and an impression or imprint on a tangible record of his or her official stamp, with the department.

(f) A certificate of appointment as a notary public for a term of 4 years stating the expiration date of the commission shall be issued to applicants who have fulfilled the requirements of this subsection.

(g) At least 30 days before the expiration of a commission the department shall provide notice of the expiration date to the holder of a commission.

(h) A notary shall be entitled to reappointment.

(i) A notary public appointed under this subsection may not do any of the following:

1. State or imply that he or she is an attorney licensed to practice law in this state.

2. Solicit or accept compensation to prepare documents for or otherwise represent the interests of another person in a judicial or administrative proceeding, including a proceeding relating to immigration to the United States or U.S. citizenship.

3. Solicit or accept compensation to obtain relief of any kind on behalf of another person from any officer, agent, or employee of this state, a political subdivision of this state, or the United States.

4. Use the phrase “notario,” “notarizaciones,” “notarizamos,” or “notario publico,” or otherwise advertise in a language other than English on signs, pamphlets, stationery, or other written communication, by radio or television, or on the Internet his or her services as a notary public if the advertisement fails to include, in English and the language of the advertisement, all of the following:

a. The statement, if in a written advertisement, in all capital letters and the same type size: “I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW IN WISCONSIN AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.” If the advertisement is given orally, the statement may be modified but must include substantially the same message and be understandable.

b. The fees that a notary public may charge under sub. (9).

(j) The prohibitions under par. (i) 2. and 3. do not apply to a notary public who is an accredited representative, as defined in 8 CFR 292.1 (a) (4).

(k) A person who violates par. (i) may be fined not more than \$10,000 or imprisoned for not more than 9 months or both. A person who commits a 2nd or subsequent violation of par. (i) may be fined not more than \$10,000 or imprisoned for not more than 6 years or both.

(2) NOTARIES PUBLIC WHO ARE ATTORNEYS. (a) Except as provided in par. (am), any United States resident who is licensed to practice law in this state is entitled to a permanent commission as a notary public upon application to the department and payment of a \$50 fee. The application shall include a certificate of good standing from the supreme court, the signature and post-office address of the applicant and an impression or imprint on a tangible record of the applicant’s official stamp.

(am) If a United States resident has his or her license to practice law in this state suspended or revoked, upon reinstatement of his or her license to practice law in this state, the person may be entitled to receive a certificate of appointment as a notary public for a term of 4 years. An eligible notary appointed under this paragraph is entitled to reappointment for 4-year increments. At least 30 days before the expiration of a commission under this paragraph the department shall provide notice of the expiration date to the holder of the commission.

(b) The department shall issue a certificate of appointment as a notary public to persons who qualify under the requirements of this subsection. The certificate shall state that the notary commission is permanent or is for 4 years.

(c) The supreme court shall file with the department notice of the surrender, suspension, or revocation of the license to practice law of any attorney who holds a permanent commission as a notary public. Such notice shall be deemed a revocation of said commission.

(3) OFFICIAL STAMP. (a) Every notary public shall provide an official stamp that satisfies the requirements under s. 140.17.

(b) The impression or imprint of the official stamp on a tangible record, or the impression upon wafer, wax, or other adhesive substance and affixed to or embossed on a tangible record, shall be deemed an affixation or embossing of the official stamp under s. 140.15 (2).

(4) ATTESTATION. (a) Every official act of a notary public shall be attested by the notary public’s written signature or electronic signature.

(b) In addition to satisfying the applicable requirement under s. 140.15 (2), a notary public who performs a notarial act within this state shall include on the certificate either the day, month, and year when the notary public’s commission expires or that such commission is permanent. This information may be part of the official stamp affixed to or embossed on the certificate, written on the certificate if it is a tangible record, or attached to or logically associated with the certificate.

(c) The official certificate of any notary public, when attested and completed in the manner provided by this subsection, shall be presumptive evidence in all cases, and in all courts of the state, of the facts therein stated, in cases where by law a notary public is authorized to certify such facts.

(5) POWERS. Notaries public have power to act throughout the state. Notaries public have power to demand acceptance of foreign and inland bills of exchange and payment thereof, and payment of promissory notes, and may protest the same for nonacceptance or nonpayment, may administer oaths, take depositions and acknowledgments of deeds, and perform such other duties as by the law of nations, or according to commercial usage, may be exercised and performed by notaries public.

(5m) CONFIDENTIALITY. (a) In this subsection, “communication technology” has the meaning given in s. 140.145 (1) (a).

(b) Except as provided in par. (c), a notary public or any provider of communication technology shall keep confidential all documents and information provided to the notary public or provider of communication technology or contained in any documents reviewed by the notary public or provider of communication technology while performing his, her, or its duties as a notary public or provider of communication technology and may release the documents or the information to a 3rd person only with the separate written consent, independent from any other consent, permission, disclosure, or acknowledgement, in a manner consistent with applicable law, of the person who requested the services of the notary public or the provider of communication technology. The prohibition under this paragraph does not apply when the notary public or the provider of communication technology is complying with a request from a regulatory agency or supervisory agency or is responding to a lawful subpoena or court order.

(c) 1. A notary public or provider of communication technology may release deposition transcripts to all parties of record in an action.

2. Subject to subd. 1., a notary public or provider of communication technology may not release deposition transcripts that have not been made part of the public record to a 3rd party without the written consent of all parties to the action and the deponent unless required by a regulatory agency or supervisory agency or in response to a lawful subpoena or court order.

3. When a deposition transcript has been made part of the public record, a notary public who is also a court reporter may, subject to a protective order or agreement to the contrary, release the deposition transcript or sell the transcript to 3rd parties without the consent of the person who requested the services of the notary public.

(d) Any notary public or provider of communication technology violating this subsection shall be subject to the provisions of sub. (8) and may be required to forfeit not more than \$500 for each violation.

(6) **AUTHENTICATION.** (a) The department may certify to the official qualifications of any notary public and to the genuineness of the notary public's signature and official stamp.

(c) Any certificate specified under this subsection shall be presumptive evidence of the facts therein stated.

(6m) **CHANGE OF RESIDENCE.** A notary public does not vacate his or her office by reason of his or her change of residence within the United States. Written notice of any change of address shall be given to the department within 10 days of the change.

(7) **OFFICIAL RECORDS TO BE FILED.** When any notary public ceases to hold office, the notary public, or in case of the notary public's death the notary public's personal representative, shall deposit the notary public's official records and papers with the department. If the notary or personal representative, after the records and papers come to his or her hands, neglects for 3 months to deposit them, he or she shall forfeit not less than \$50 nor more than \$500. If any person knowingly destroys, defaces, or conceals any records or papers of any notary public, the person shall forfeit not less than \$50 nor more than \$500, and shall be liable for all damages resulting to the party injured. The department shall receive and safely keep all such papers and records.

(8) **MISCONDUCT.** If any notary public shall be guilty of any misconduct or neglect of duty in office the notary public shall be liable to the party injured for all the damages thereby sustained.

(9) **FEES.** Except when the department has established different fees as provided in s. 140.27 (1) (a) 1., a notary public shall be allowed the following fees:

(a) For drawing and copy of protest of the nonpayment of a promissory note or bill of exchange, or of the nonacceptance of such bill, not more than \$5 in the cases where by law such protest is necessary, but in no other case.

(b) For drawing and copy of every other protest, not more than \$5.

(c) For drawing, copying and serving every notice of nonpayment of a note or bill, or nonacceptance of a bill, not more than \$5.

(d) For drawing any affidavit, or other paper or proceeding for which provision is not herein made, not more than \$5 for each folio, and for copying the same 12 cents per folio.

(e) For taking the acknowledgment of deeds, and for other services authorized by law, the same fees as are allowed to other officers for similar services, but the fee per document shall not exceed \$5.

History: 1971 c. 213 s. 5; 1977 c. 29, 449; 1979 c. 221; 1981 c. 380; 1981 c. 391 s. 211; 1993 a. 482; 1997 a. 27, 306; 1999 a. 77, 166; 2001 a. 16, 102; 2003 a. 294; 2007 a. 110; 2011 a. 32, 233; 2013 a. 20; 2019 a. 125 ss. 7 to 22, 33; Stats. 2019 s. 140.02; 2023 a. 258.

"All the damages" in former s. 137.01 (8) [now sub. (8)] incorporates the American rule of damages that attorney fees are not recoverable by a prevailing party unless certain exceptions apply. *Bank One, Wisconsin v. Koch*, 2002 WI App 176, 256 Wis. 2d 618, 649 N.W.2d 339, 01-2174.

The residency requirement under former s. 137.01 (1) and (2) [now subs. (1) and (2)] is constitutional. 74 Atty. Gen. 221.

Protecting the Privacy of Notary Public Records. Closen & Orsinger. Wis. Law. Mar. 2002.

Notary Public Title Incurs Responsibility. Nelson. Wis. Law. June 2002.

140.04 Authority to perform notarial act. (1) A notarial officer may perform a notarial act authorized by this chapter or by law of this state other than this chapter.

(2) A notarial officer may not perform a notarial act with respect to a record to which the officer or the officer's spouse or domestic partner is a party or in which either of them has a direct beneficial interest. A notarial act performed in violation of this subsection is voidable.

(3) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

History: 2019 a. 125.

140.05 Requirements for certain notarial acts. (1) A notarial officer who takes an acknowledgment of a record shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before

the officer and making the acknowledgment has the identity claimed and that the signature on the record is the signature of the individual.

(2) A notarial officer who takes a verification of a statement on oath or affirmation shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and making the verification has the identity claimed and that the signature on the statement verified is the signature of the individual.

(3) A notarial officer who witnesses or attests to a signature shall determine, from personal knowledge or satisfactory evidence of the identity of the individual, that the individual appearing before the officer and signing the record has the identity claimed.

(4) A notarial officer who certifies or attests a copy of a record or an item that was copied shall determine that the copy is a full, true, and accurate transcription or reproduction of the record or item.

(5) A notarial officer who makes or notes a protest of a negotiable instrument shall determine the matters set forth in s. 403.505 (2).

History: 2019 a. 125.

140.06 Personal appearance required. If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notarial officer.

History: 2019 a. 125.

140.07 Identification of individual. (1) A notarial officer has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed.

(2) A notarial officer has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual in any of the following ways:

(a) By means of any of the following:

1. A passport, vehicle operator's license, or government-issued identification card, which is current or expired not more than 3 years before performance of the notarial act.

2. Another form of government identification issued to an individual, which is current or expired not more than 3 years before performance of the notarial act, contains the signature or a photograph of the individual, and is satisfactory to the officer.

(b) By a verification on oath or affirmation of a credible witness personally appearing before the officer and known to the officer or whom the officer can identify on the basis of a passport, vehicle operator's license, or government-issued identification card, which is current or expired not more than 3 years before performance of the notarial act.

(3) A notarial officer may require an individual to provide additional information or identification credentials necessary to assure the officer of the identity of the individual.

History: 2019 a. 125.

140.08 Authority to refuse to perform notarial act.

(1) A notarial officer may refuse to perform a notarial act if the officer is not satisfied with respect to any of the following:

(a) That the individual executing the record is competent or has the capacity to execute the record.

(b) That the individual's signature is knowingly and voluntarily made.

(2) A notarial officer may refuse to perform a notarial act unless refusal is prohibited by law other than this chapter.

History: 2019 a. 125.

140.09 Signature if individual unable to sign. If an individual is physically unable to sign a record, the individual may direct an individual other than the notarial officer to sign the indi-

140.09 NOTARIES PUBLIC; NOTARIAL ACTS

Updated 21–22 Wis. Stats. 4

vidual's name on the record. The notarial officer shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

History: 2019 a. 125.

140.10 Notarial act in this state. (1) A notarial act may be performed within this state by any of the following persons of this state:

- (a) A notary public of this state.
- (b) A judge, clerk, or deputy clerk of a court of record.
- (c) A court commissioner.
- (d) A register of deeds or deputy register of deeds.
- (e) A municipal judge.
- (f) A county clerk or deputy county clerk.

(2) The signature and title of an individual performing a notarial act in this state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in sub. (1) conclusively establish the authority of the officer to perform the notarial act.

History: 2019 a. 125.

140.11 Notarial act in another state. (1) A notarial act performed in another state has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed in that state is performed by any of the following:

- (a) A notary public of that state.
- (b) A judge, clerk, or deputy clerk of a court of that state.
- (c) Any other individual authorized by the law of that state to perform the notarial act.

(2) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in sub. (1) (a) or (b) conclusively establish the authority of the officer to perform the notarial act.

History: 2019 a. 125.

140.12 Notarial act under authority of federally recognized Indian tribe. (1) A notarial act performed under the authority and in the jurisdiction of a federally recognized Indian tribe has the same effect as if performed by a notarial officer of this state, if the act performed in the jurisdiction of the tribe is performed by any of the following:

- (a) A notary public of the tribe.
- (b) A judge, clerk, or deputy clerk of a court of the tribe.
- (c) Any other individual authorized by the law of the tribe to perform the notarial act.

(2) The signature and title of an individual performing a notarial act under the authority of and in the jurisdiction of a federally recognized Indian tribe are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of a notarial officer described in sub. (1) (a) or (b) conclusively establish the authority of the officer to perform the notarial act.

History: 2019 a. 125.

140.13 Notarial act under federal authority. (1) A notarial act performed under federal law has the same effect under the law of this state as if performed by a notarial officer of this state, if the act performed under federal law is performed by any of the following:

- (a) A judge, clerk, or deputy clerk of a court.
- (b) An individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law.
- (c) An individual designated a notarizing officer by the federal department of state for performing notarial acts overseas.

(d) Any other individual authorized by federal law to perform the notarial act.

(2) The signature and title of an individual acting under federal authority and performing a notarial act are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(3) The signature and title of an officer described in sub. (1) (a), (b), or (c) conclusively establish the authority of the officer to perform the notarial act.

History: 2019 a. 125.

140.14 Foreign notarial act. (1) In this section, "foreign state" means a government other than the United States, a state, or a federally recognized Indian tribe.

(2) If a notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this state as if performed by a notarial officer of this state.

(3) If the title of office and indication of authority to perform notarial acts in a foreign state appear in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established.

(4) The signature and official stamp of an individual holding an office described in sub. (3) are prima facie evidence that the signature is genuine and the individual holds the designated title.

(5) An apostille in the form prescribed by the Hague Convention of October 5, 1961, and issued by a foreign state party to the convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

(6) A consular authentication issued by an individual designated by the federal department of state as a notarizing officer for performing notarial acts overseas and attached to the record with respect to which the notarial act is performed conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office.

History: 2019 a. 125.

140.145 Notarial act performed for remotely located individual. (1) In this section:

(a) "Communication technology" means an electronic device or process that satisfies all of the following:

1. The device or process allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound.

2. When necessary and consistent with other applicable law, the device or process facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(b) "Foreign state" means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(c) "Identity proofing" means a process or service by which a 3rd person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(d) "Outside the United States" means a location outside the geographic boundaries of the United States, Puerto Rico, the U.S. Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

(e) "Remotely located individual" means an individual who is not in the physical presence of the notary public who performs a notarial act under sub. (3).

(1m) For purposes of determining the jurisdiction in which a notarial act is performed for a remotely located individual, the location of the notary public shall be determinative.

(2) A remotely located individual may comply with s. 140.06 by using communication technology to appear before a notary public.

(3) Except for the administration of an oath before a witness at a deposition, a notary public located in this state may perform a notarial act using communication technology for a remotely located individual if all of the following apply:

(a) The notary public has any of the following:

1. Personal knowledge under s. 140.07 (1) of the identity of the individual.

2. Satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under s. 140.07 (2) or this section.

3. Obtained satisfactory evidence of the identity of the remotely located individual by using at least 2 different types of identity proofing.

(b) The notary public is able reasonably to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature.

(c) The notary public, or a person acting on behalf of the notary public, creates an audio–visual recording of the performance of the notarial act.

(d) For a remotely located individual located outside the United States, all of the following are satisfied:

1. The record satisfies any of the following requirements:

a. The record is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States.

b. The record involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States.

2. The act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

(4) If a notarial act is performed under this section, the certificate of notarial act required by s. 140.15 and the short form certificate provided in s. 140.16 must indicate that the notarial act was performed using communication technology.

(5) A short form certificate provided in s. 140.16 for a notarial act subject to this section is sufficient if any of the following applies:

(a) The certificate complies with rules promulgated under sub. (8) (a).

(b) The certificate is in the form provided in s. 140.16 and contains a statement substantially as follows: “This notarial act involved the use of communication technology.”

(6) A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audio–visual recording created under sub. (3) (c) or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule promulgated under sub. (8) (d), the recording must be retained for a period of at least 7 years after the recording is made.

(7) Before a notary public performs the notary public’s initial notarial act under this section, the notary public must notify the department that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the department has established standards under sub. (8) and s. 140.27 for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

(8) In addition to promulgating rules under s. 140.27, the department shall promulgate rules under this section regarding

performance of a notarial act. The rules may do any of the following:

(a) Prescribe the means of performing a notarial act involving a remotely located individual using communication technology.

(b) Establish standards for communication technology and identity proofing.

(c) Establish requirements, including registration, or procedures to approve providers of communication technology and the process of identity proofing.

(d) Establish standards and a period for the retention of an audio–visual recording created under sub. (3) (c).

(e) Establish any other requirement, not inconsistent with this chapter, relating to the performance of a notarial act for a remotely located individual.

(9) Before promulgating, amending, or repealing a rule governing performance of a notarial act with respect to a remotely located individual, the department must consider all of the following:

(a) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard–setting organizations and the recommendations of the National Association of Secretaries of State or any successor organization.

(b) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section.

(c) The views of governmental officials and entities and other interested persons.

(10) This section does not apply to a transaction to the extent it is governed by any of the following:

(a) Any law governing the creation and execution of wills, codicils, or testamentary trusts.

(b) Any law governing the creation and execution of living trusts or trust amendments for personal use, not including a transaction, as defined in s. 137.11 (15).

(c) Any law governing the creation and execution of powers of attorney, not including any of the following:

1. A transaction, as defined in s. 137.11 (15).

2. A limited financial power of attorney for a real estate transaction.

(d) Any law governing the creation and execution of marital property agreements.

(e) Any law governing the creation and execution of powers of attorney for health care, declarations to physicians (living wills), and authorizations for use and disclosure of protected health care information.

(11) (a) The remote notary council shall adopt standards to implement this section. The department shall promulgate by rule the standards adopted, amended, or repealed by the council under this paragraph.

(b) To keep the standards and practices of notaries public in this state in harmony with the standards and practices of notaries public in other jurisdictions that enact substantially this section and to keep the technology used by notaries public in this state compatible with technology used by notaries public in other jurisdictions that enact substantially this section, the remote notary council, so far as is consistent with the purposes, policies, and provisions of this section, in adopting, amending, and repealing standards shall consider all of the following:

1. Standards and practices of other jurisdictions.

2. The most recent standards promulgated by national standard–setting bodies.

3. The views of interested persons and governmental officials and entities.

4. The need for security protection to ensure that notarial acts for remotely located individuals are accurate, authentic, adequately preserved, and resistant to tampering.

(c) The remote notary council shall review the statutes related to notarial acts for remotely located individuals and shall recommend to the legislature any changes in the statutes that the council finds necessary or advisable.

History: 2019 a. 125; 2023 a. 129.

140.147 Notarial act performed for remote execution of estate planning documents. (1) In this section:

- (a) “Estate planning document” means any of the following:
1. A will or a codicil.
 2. A declaration of trust or other document creating a trust as provided in s. 701.0401 or an amendment to a declaration of trust or other document creating a trust.
 3. A certification of trust as provided in s. 701.1013.
 4. A power of attorney for finances and property.
 5. A power of attorney for health care.
 6. A marital property agreement or an amendment to a marital property agreement.
 7. A written instrument evidencing a nonprobate transfer pursuant to s. 705.10, 705.15, 705.18, or 766.58 (3) (f).
 8. A declaration to health care professionals.
 9. An authorization for final disposition.
 10. An authorization for use and disclosure of protected health information.
 11. An instrument of disclaimer under s. 854.13.
 12. An instrument exercising a power of appointment under ch. 702.

(b) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs the notarial act pursuant to this section.

(c) “Sign” means, with respect to a remotely located individual, the execution of an estate planning document that is required or intended to be executed in the presence of a notary public.

(2) (a) An estate planning document may not be denied legal effect or enforceability relating to a transaction solely because a notarial act was performed in compliance with this section.

(b) Except as provided in par. (a), this section shall not apply to, or impact the legal effect or enforceability of, any electronic records or electronic signatures governed by ch. 137.

(3) For purposes of signing an estate planning document, a remotely located individual may comply with s. 140.06 by appearing before a notary public via 2–way, real–time audiovisual communication technology if all of the following requirements are satisfied:

(a) The signing is supervised by an attorney in good standing licensed to practice law in this state. The supervising attorney may serve as the notary public.

(b) The remotely located individual attests to being physically located in this state during the 2–way, real–time audiovisual communication.

(c) The notary public attests to being physically located in this state during the 2–way, real–time audiovisual communication.

(d) The remotely located individual positively confirms the remotely located individual’s identity. If the remotely located individual is not personally known to the notary public and the supervising attorney, the remotely located individual shall provide satisfactory evidence of the remotely located individual’s identity as provided in s. 140.07.

(e) The remotely located individual identifies anyone else present in the same physical location as the remotely located individual. If possible, the remotely located individual shall make a visual sweep of the remotely located individual’s physical surroundings so that the notary public and the supervising attorney can confirm the presence of any other persons.

(f) The remotely located individual displays the estate planning document, confirms the total number of pages and the page

number on which the remotely located individual’s signature is to be affixed, and declares to the notary public and the supervising attorney that the remotely located individual is 18 years of age or older, that the document is the remotely located individual’s estate planning document, and that the document is being executed as a voluntary act.

(g) The remotely located individual, or another individual 18 years of age or older authorized to sign on behalf of the remotely located individual at the express direction and in the physical presence of the remotely located individual, signs the estate planning document in a manner that allows the notary public and the supervising attorney to see the signing. If the estate planning document is signed by someone on behalf of the remotely located individual, the signing shall comply with s. 140.09.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the remotely located individual, the notary public, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The estate planning document indicates that it is being executed pursuant to this section.

(j) One of the following occurs:

1. The remotely located individual, or another person at the direction of the remotely located individual, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original estate planning document to the supervising attorney within a reasonable time after the signing. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original estate planning document to the notary public within a reasonable time. The notary public then performs the intended notarial act and forwards the entire original estate planning document by personal delivery or U.S. mail or commercial courier service to the supervising attorney within a reasonable time.

2. The remotely located individual, or another person at the direction of the remotely located individual, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original estate planning document to the supervising attorney within a reasonable time after the signing and transmits by facsimile or electronic means a legible copy of the entire signed estate planning document directly to the notary public within a reasonable time after the signing. The notary public then performs the intended notarial act and personally delivers or transmits by U.S. mail or commercial courier service the entire signed copy of the estate planning document to the supervising attorney within a reasonable time. The signed original and signed copy together shall constitute one original document unless the supervising attorney, within a reasonable time after receiving the signed original and signed copy, compiles the signed original and signed copy into one document by attaching the page or pages containing the notarial act to the original signed by or on behalf of the remotely located individual, in which case the compiled document shall constitute the original.

3. The remotely located individual, or another person at the express direction of the remotely located individual, and the notary public sign identical copies of the original estate planning document. The remotely located individual, or another person at the direction of the remotely located individual, and the notary public personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after the signing and performance of the notarial act. All of the originals together shall constitute one document unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the page or pages containing the notarial

act to the original signed by or on behalf of the remotely located individual, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes and attaches to the estate planning document an affidavit of compliance that contains the following information:

1. The name and residential address of the remotely located individual.

2. The name and residential or business address of the notary public.

3. The address within the state where the remotely located individual was physically located at the time that the estate planning document was signed by the remotely located individual or another individual on behalf of the remotely located individual.

4. The address within the state 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.

5. A statement that the remotely located individual and notary public were known to each other and the supervising attorney or a description of the form of identification used to confirm the identity of the remotely located individual.

6. The identity of anyone else present in the same physical location as the remotely located individual during the signing.

7. Confirmation that 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 estate planning document, and that the document was being executed as the remotely located individual's voluntary act.

8. Confirmation that the notary public and the supervising attorney were able to see the remotely located individual, or an individual 18 years of age or older at the express direction and in the physical presence of the remotely located individual, sign, and that the remotely located individual appeared to be 18 years of age or older and acting voluntarily.

9. A description of the audiovisual technology used for the signing process.

10. If the estate planning document was not signed in counterpart, a description of the method used to forward the estate planning document to the notary public and to the supervising attorney upon completion of the signing process.

11. If the estate planning document was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document.

12. The name, state bar number, and business or residential address of the supervising attorney.

13. Any other information that the supervising attorney considers to be material with respect to the remotely located individual's capacity to sign a valid estate planning document, the remotely located individual's and notary public's compliance with this section, or any other information that the supervising attorney deems relevant to the signing of the estate planning document.

(4) An affidavit of compliance completed and attached to the estate planning document pursuant to sub. (3) (k) shall serve as conclusive evidence that the estate planning document was executed in compliance with this section.

(5) An affidavit of compliance shall be in substantially the following form:

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:]

(6) If a supervising attorney is required to complete an affidavit in order to execute an estate planning document pursuant to another provision of law, the information required in that affidavit

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may be combined with the information required in the affidavit of compliance into a single affidavit.

(7) For a notarial act performed under this section, the certificate of notarial act required under s. 140.15 may be in the following short form, if completed with the information required by s. 140.15 (1) and (2):

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:]

History: 2023 a. 130.

140.15 Certificate of notarial act. (1) A notarial act must be evidenced by a certificate. The certificate must satisfy all of the following:

(a) Be executed contemporaneously with the performance of the notarial act.

(b) Be signed and dated by the notarial officer and, if the notarial officer is a notary public, be signed in the same manner as on file with the department.

(c) Identify the jurisdiction in which the notarial act is performed.

(d) Contain the title of office of the notarial officer.

(e) If the notarial officer is a notary public, indicate the date of expiration, if any, of the officer's commission.

(2) If a notarial act regarding a tangible record is performed by a notary public, an official stamp must be affixed to or embossed on the certificate. If a notarial act is performed regarding a tangible record by a notarial officer other than a notary public and the certificate contains the information specified in sub. (1) (b), (c), and (d), an official stamp may be affixed to or embossed on the certificate. If a notarial act regarding an electronic record is performed by a notarial officer and the certificate contains the information specified in sub. (1) (b), (c), and (d), an official stamp may be attached to or logically associated with the certificate.

(3) A certificate of a notarial act is sufficient if it meets the requirements of subs. (1) and (2) and satisfies any of the following:

(a) Is in a short form set forth in s. 140.16.

(b) Is in a form otherwise permitted by the law of this state.

(c) Is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed.

(d) Sets forth the actions of the notarial officer and the actions are sufficient to meet the requirements of the notarial act as provided in ss. 140.05, 140.06, and 140.07 or law of this state other than this chapter.

(4) By executing a certificate of a notarial act, a notarial officer certifies that the officer has complied with the requirements and made the determinations specified in ss. 140.04, 140.05, and 140.06.

(5) A notarial officer may not affix the officer's signature to, or logically associate it with, a certificate until the notarial act has been performed.

(6) If a notarial act is performed regarding a tangible record, a certificate must be part of, or securely attached to, the record. If a notarial act is performed regarding an electronic record, the certificate must be affixed to, or logically associated with, the electronic record. If the department has established standards pursuant to s. 140.27 for attaching, affixing, or logically associating the certificate, the process must conform to the standards.

History: 2019 a. 125.

140.16 Short form certificates. The following short form certificates of notarial acts are sufficient for the purposes indicated, if completed with the information required by s. 140.15 (1) and (2):

(1) For an acknowledgment in an individual capacity:

State of

County of

This record was acknowledged before me on ... (date) by (name(s) of individual(s)).

.... (Signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

(2) For an acknowledgment in a representative capacity:

State of

County of

This record was acknowledged before me on (date) by (name(s) of individual(s)) as (type of authority, such as officer or trustee) of (name of party on behalf of whom record was executed).

.... (Signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

(3) For a verification on oath or affirmation:

State of

County of

Signed and sworn to (or affirmed) before me on (date) by (name(s) of individual(s) making statement).

.... (Signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

(4) For witnessing or attesting a signature:

State of

County of

Signed [or attested] before me on (date) by (name(s) of individual(s)).

.... (Signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

(5) For certifying or attesting a copy of a record:

State of ...

County of

I certify or attest that this is a true and correct copy of a record in the possession of

Dated:

.... (Signature of notarial officer)

Stamp

.... (Title of office)

[My commission expires:]

History: 2019 a. 125.

140.17 Official stamp. (1m) The official stamp of a notary public must satisfy all of the following criteria:

(a) Include the notary public's name, the words "Notary Public" and "State of Wisconsin," and other information required by the department.

(b) Be capable of being copied together with the record to which it is affixed or attached or with which it is logically associated.

(2m) The official stamp of a notary public may include the notary public's commission expiration date if applicable.

(3) The official stamp of a notary public may not include information other than the information required under sub. (1m) or permitted under sub. (2m).

History: 2019 a. 125; 2023 a. 258.

140.18 Stamping device. (1) (a) A notary public is responsible for the security of the notary public's stamping device and may not allow another individual to use the device to perform a notarial act.

(b) On resignation from, or the revocation or expiration of, the notary public's commission, or on the expiration of the date set forth in the stamping device, if any, the notary public shall disable the stamping device by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.

(c) On the death or adjudication of incompetency of a notary public, the notary public's personal representative or guardian or any other person knowingly in possession of the stamping device shall render it unusable by destroying, defacing, damaging, erasing, or securing it against use in a manner that renders it unusable.

(2) If a notary public's stamping device is lost or stolen, the notary public or the notary public's personal representative or guardian shall promptly notify the department on discovering that the device is lost or stolen.

History: 2019 a. 125.

140.20 Notification regarding performance of notarial act for remotely located individuals; selection of technology; acceptance of tangible copy of electronic record. (1) A notary public may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person may not require a notary public to perform a notarial act with respect to an electronic record with a technology that the notary public has not selected.

(2) Before a notary public performs the notary public's initial notarial act for a remotely located individual under s. 140.145, the notary public shall notify the department that the notary public will be performing notarial acts for remotely located individuals under s. 140.145 and identify the technology the notary public intends to use. If the department has established standards for approval of technology pursuant to s. 140.27, the technology must conform to the standards. If the technology conforms to the standards, the department shall approve the use of the technology.

(3) A register of deeds may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies or attests that the tangible copy is an accurate copy of the electronic record.

History: 2019 a. 125.

140.24 Database of notaries public. The department shall maintain an electronic database of notaries public to which all of the following apply:

(1) A person may verify through the database the authority of a notary public to perform notarial acts.

(2) The database indicates whether a notary public has notified the department that the notary public will be performing notarial acts for remotely located individuals under s. 140.145.

History: 2019 a. 125.

140.26 Validity of notarial acts. Except as otherwise provided in s. 140.04 (2), the failure of a notarial officer to perform a duty or meet a requirement specified in this chapter does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act under this chapter does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on law of this state other than this chapter or law of the United States. This section does not validate a purported

notarial act performed by an individual who does not have the authority to perform notarial acts.

History: 2019 a. 125.

140.27 Rules; powers of the department. (1) (a) Subject to pars. (b) and (c), the department shall promulgate rules to implement this chapter. These rules shall do all of the following:

1. Establish maximum fees that may be charged by a notary public for performing a notarial act for a remotely located individual.

2. Prescribe the manner of performing notarial acts regarding tangible and electronic records.

3. Include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident.

4. Include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures.

5. Prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking a notary public commission and assuring the trustworthiness of an individual holding a commission as a notary public.

6. Include provisions to prevent fraud or mistake in the performance of notarial acts.

(b) Rules promulgated under par. (a) regarding the performance of notarial acts with respect to electronic records may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification.

(c) In promulgating rules under par. (a) about notarial acts with respect to electronic records, the department shall consider, so far as is consistent with this chapter, all of the following:

1. The most recent standards regarding electronic records promulgated by national bodies, such as the National Association of Secretaries of State.

2. Standards, practices, and customs of other jurisdictions that substantially enact the revised uniform law on notarial acts (2018) or any subsequent version of this act.

3. The views of governmental officials, entities, and other interested persons.

(2) The department has the power, jurisdiction, and authority to do any of the following:

(a) Investigate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule promulgated or order issued under this chapter. For the purpose of an investigation under the chapter, the department may administer oaths and affirmations, issue subpoenas, take evidence, require the filing of statements, require testimony, and require the production of any records that the department considers relevant or material to the investigation.

(b) Revoke, suspend, or restrict any commission or registration issued under this chapter if the department determines that the person holding the commission or registration has refused to comply with an investigation demand under par. (a) or has violated, is violating, or is about to violate this chapter or any rule promulgated or order issued under this chapter.

History: 2019 a. 125.

140.30 Uniformity of application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History: 2019 a. 125.

140.31 Relation to electronic signatures in global and national commerce act. This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031, but does not modify, limit, or supersede section 101 (c) of that act, 15 USC 7001 (c), or autho-

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size electronic delivery of any of the notices described in section 103 (b) of that act, [15 USC 7003](#) (b).

History: [2019 a. 125](#).

140.34 Short title. This chapter may be cited as the Revised Uniform Law on Notarial Acts (2018).

History: [2019 a. 125](#).

Chapter DFI-CCS 25

NOTARIES PUBLIC AND NOTARIAL ACTS

DFI-CCS 25.01 Definitions.
 DFI-CCS 25.02 Notices from the department; notary contact information.
 DFI-CCS 25.03 Notarial acts for remotely located individuals.
 DFI-CCS 25.04 Providers of communication technology used to perform notarial acts for remotely located individuals.

DFI-CCS 25.05 Alternative processes used to perform notarial acts for remotely located individuals.
 DFI-CCS 25.06 Investigations; suspensions and revocations of notary public commissions.

DFI-CCS 25.01 Definitions. In this chapter, unless otherwise indicated, words and phrases shall have the meanings specified in ss. 140.01, 140.145, and 990.01, Stats.

History: EmR2005: emerg. cr., eff. 5-9-20; CR 22-009: cr. Register April 2023 No. 808, eff. 5-1-23.

DFI-CCS 25.02 Notices from the department; notary contact information. (1) Notices and other communications from the department may be provided to a notary public by email or other electronic means.

(2) A notary public shall provide the department with written notice, in a form and manner acceptable to the department, of any change of name, seal or stamp, and address, including primary email address, within 10 days of the change.

History: EmR2005: emerg. cr., eff. 5-9-20; CR 22-009: cr. Register April 2023 No. 808, eff. 5-1-23.

DFI-CCS 25.03 Notarial acts for remotely located individuals. A notary public of this state may perform a notarial act for a remotely located individual if all the following apply:

(1) The notary public performs the notarial act by utilizing a communication technology provider that has authorized the notary public to utilize its technology and has been approved pursuant to s. DFI-CCS 25.04, or by utilizing an alternative process that has been approved pursuant to s. DFI-CCS 25.05.

(2) The notary public has reviewed and understands s. 140.145, Stats., and all guidance published on the department's website regarding the performance of notarial acts for remotely located individuals.

(3) The notary public is competent with the technologies and processes to be utilized in performing notarial acts for remotely located individuals.

History: EmR2005: emerg. cr., eff. 5-9-20; CR 22-009: cr. Register April 2023 No. 808, eff. 5-1-23.

DFI-CCS 25.04 Providers of communication technology used to perform notarial acts for remotely located individuals. (1) **APPROVAL REQUIRED.** A provider of communication technology used to perform notarial acts for remotely located individuals shall obtain approval as provided in this section before allowing its platform to be used by a notary public of this state to perform a notarial act for a remotely located individual.

(2) **CONTENTS OF REQUESTS FOR APPROVAL.** A provider of communication technology may request approval of the remote notary council by submitting documentation or other evidence to the department, in a form and manner acceptable to the department, that explains all the following:

(a) How the provider will ensure that notarial acts for a remotely located individual performed on the provider's platform by a notary public of this state comply with the requirements of ss. 140.145 and 140.20, Stats., and this chapter.

(b) The proposed method of performing a notarial act involving a remotely located individual using the provider's communication technology.

(c) The proposed method by which a provider's identity proofing will operate to ensure compliance with s. 140.07, Stats.

(d) Whether the provider's technology and identity proofing processes meet the most current standards of the Mortgage Industry Standards Maintenance Organization.

(e) The means used to ensure that notarial acts for a remotely located individual are accurate, authentic, resistant to tampering, and tamper-evident.

(f) The means used to ensure that all parties using the communication technology are viewing the same record, and that all signatures, changes, and attachments to the record are made in real time.

(g) The means used to ensure that the communication technology is secure from hacking or interception.

(h) The means used to ensure that a notarial act for a remotely located individual is recorded and adequately preserved for a period of at least seven years after the recording is made.

(i) The means used to ensure that a notary public is properly instructed and competent to perform a notarial act for a remotely located individual using the provider's communication technology.

(j) All jurisdictions in which a provider's communication technology has been approved or disapproved for the performance of a notarial act for a remotely located individual.

(k) A provider's experience utilizing the means, processes, and procedures described in this subsection.

(L) Any warning letters or complaints received, or disciplinary actions taken against a provider in any other jurisdiction.

(m) Any pending or adjudicated lawsuits against a provider relating in any way to the performance of notarial acts using the provider's communication technology in any jurisdiction.

(n) Whether the provider has and will maintain insurance coverage or other security for potential errors or omissions relating to the communication technology or provider's processes.

(o) Any other information that the department or remote notary council requests and believes is necessary or helpful in evaluating a provider's request for approval.

(3) **PROCEDURE FOR REQUESTS FOR APPROVAL.** (a) Once the department is satisfied that a provider's application includes the information required in sub. (2), the department shall schedule the application for consideration at a forthcoming meeting of the remote notary council.

(b) A representative of the applicant with knowledge of its processes and authority to make binding representations on its behalf shall be available to participate in the meeting and respond to questions from remote notary council members. Unless otherwise specified by the remote notary council, the representative may participate by phone or other remote means.

(c) Upon consideration of the merits of the applicant and application, the remote notary council may approve the application, impose additional conditions or limitations upon approval, deny the application, table the application for further deliberation at a subsequent meeting, or require the applicant to supplement the

application with additional explanations, information, or evidence of its ability to ensure compliance with state law.

(d) Upon approval of a provider's application, the department shall add the provider to a public list of approved providers of communication technology for notarial acts for remotely located individuals.

(4) PROVIDER STATEMENTS BINDING; DUTIES TO SUPPLEMENT AND TO NOTIFY. (a) All representations, promises, and assurances of future performance by a provider or its representative to the department or the remote notary council are binding on the provider.

(b) If facts or circumstances change such that any material statement, representation, or explanation made by a provider approved under this section is no longer accurate or complete, the provider shall promptly inform the department of the change, explain the reasons for it, and provide an updated version of any application document affected by the change.

(c) A provider approved under this section shall promptly inform the department, in a form and manner acceptable to the department, regarding notaries public of this state who have become newly authorized to use the provider's communication technology to perform notarial acts for remotely located individuals.

(5) TERMINATION OR LIMITATION OF APPROVAL. (a) The department or the remote notary council may restrict, limit, suspend, or terminate any approval granted to a provider under this section if it concludes that any of the following apply:

1. The provider has violated ch. 140, Stats., this chapter, or any other relevant state or federal statute or administrative rule.
2. The provider has violated any condition of any approval granted under this section.
3. The provider has made a false or misleading statement or omission of material fact to the department or the remote notary council.
4. The provider has been subject to administrative discipline or legal action in another jurisdiction.
5. Any fact or condition exists that, if the provider were required to re-apply under this section, would warrant the denial or restriction of approval.
6. Any other fact or condition exists that undermines the department's or the remote notary council's confidence in the ability of the provider to meet its duties and ensure compliance with ch. 140, Stats.

(b) When restricting, limiting, suspending, or terminating any approval granted to a provider under this section, the department or the remote notary council may take, or require the provider to

take, any further action it deems necessary and appropriate to mitigate risks of harm to notaries public or others.

History: [EmR2005](#): emerg. cr., eff. 5-9-20; [CR 22-009](#): cr. [Register April 2023 No. 808](#), eff. 5-1-23.

DFI-CCS 25.05 Alternative processes used to perform notarial acts for remotely located individuals. In addition to the method of utilizing a communication technology provider that is approved under s. [DFI-CCS 25.04](#), the department may establish alternative processes or methods of performing notarial acts for remotely located individuals, provided such processes or methods meet the requirements of ch. 140, Stats.

History: [EmR2005](#): emerg. cr., eff. 5-9-20; [CR 22-009](#): cr. [Register April 2023 No. 808](#), eff. 5-1-23.

DFI-CCS 25.06 Investigations; suspensions and revocations of notary public commissions. (1) The department may investigate whether a person has violated, is violating, or is about to violate any provision of ch. 140, Stats., or this chapter. The department may administer oaths and affirmations, issue subpoenas, take evidence, require the filing of statements (including responses to allegations), require testimony in oral or written form, and require the production of any records that the department considers relevant or material to the investigation.

(2) The department may deny, refuse to renew, revoke, suspend, or impose a condition on the commission of a notary public for any act or omission that demonstrates the individual lacks the competence, reliability, or integrity to act as a notary public, including any of the following:

- (a) Failing to comply with any provision of ch. 140, Stats., or this chapter.
- (b) Committing an act of fraud, deceit, or of any other misconduct substantially relating to the character or public trust required of a notary public.
- (c) Being convicted in any jurisdiction of committing any felony, any misdemeanor involving fraud, forgery, or similar violations of the public trust, or the unauthorized practice of law.
- (d) Using false or misleading advertising or otherwise engaging in any method, act, or practice that is unfair or deceptive, including any untrue or misleading statement or omission of a material fact relating to a duty or responsibility of a notary public.
- (e) Making an untrue or misleading statement, or knowingly omitting a material fact, in any application or filing required by ch. 140, Stats.
- (f) Failing to promptly and fully comply with any investigation or request for information by the department.

History: [EmR2005](#): emerg. cr., eff. 5-9-20; [CR 22-009](#): cr. [Register April 2023 No. 808](#), eff. 5-1-23.



State of Wisconsin


Department of Financial Institutions

Remote Online Notary



Remote Online Notarization (RON) was authorized in Wisconsin for the first time when on March 3, 2020 Governor Evers signed bipartisan legislation Wisconsin Act 125. Act 125 created the five-member Remote Notary Council and established several requirements to safeguard the integrity of the notarial process and help ensure that remote online notarial acts performed by Wisconsin notaries are accurate, authentic, adequately preserved, and secure. Among other safeguards, the law requires notaries performing remote online notarizations to utilize technologies that have been approved under the standards of the Remote Notary Council and DFI. Act 125 does not permit the use of unapproved technologies in performing remote online notarizations.

Wisconsin commissioned notaries can choose to register with any number of the approved Technology Providers (list updates as new providers are approved). Once a notary signs up with a provider and is approved by them they may begin using the provider platform immediately. The provider will inform DFI of the RON registration and it will be noted that the notary is now a RON on the notary search.

Remote Online Notarization - for Notaries

-  [Guidance for Notaries Seeking to Perform Remote Online Notarial Acts](#) (updated March 2024)
- [Guidance for Seeking Remote Online Notarial Services](#)
- [Guidance on Identity Proofing](#)
- [Guidance on the Performance of Notarial Acts on the Basis of Personal Knowledge](#)
- [List of Approved Remote Online Notary Technology Providers](#)

Remote Online Notarization- for Technology Providers

- [RON Technology Providers Portal](#)
-  [RON Communication Technology Provider Application](#)
-  [RON Annual Confirmation & Recertification Form](#) (for Approved Technology Providers)

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

Last updated: March 22, 2024

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:]



State of Wisconsin

Department of Financial Institutions

Identity Proofing Guidance

The Remote Notary Council and this Department are jointly tasked with developing standards for remote online notarial acts performed by notaries public of this state, including standards relating to confirming the identity of the remotely located individual.¹ Wisconsin law provides three permissible means for the notary to verify the individual's identity:

1. Personal knowledge of the identity of the individual, if the individual is personally known to the notary through dealings sufficient to provide reasonable certainty that the individual has the identity claimed² ;
2. Satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary whose identity is verified under methods (1) or (3)³ ; OR
3. Satisfactory evidence of the identity of the remotely located individual by using at least two different types of "identity proofing"—that is, a process or service by which a third party provides the notary with a means of identity verification by a review of personal information from public or private data sources.⁴

This guidance addresses the standards for the third method of identity verification (identity proofing).

In adopting standards for identity proofing and other elements of remote online notarization, the Council and the Department must "keep the standards and practices of notaries public in this state in harmony with the standards and practices of notaries public in other jurisdictions," so long as they are consistent with the purposes, policies, and provisions of Wisconsin law.⁵

The Mortgage Industry Standards Maintenance Organization (MISMO) is a national standards-setting organization for the mortgage industry. In 2019 it released detailed standards for remote online notarization, including identity proofing, that have proven influential in the industry and have been referenced in model legislation that is substantially similar to Wisconsin law. The Council and the Department have determined MISMO's standards for identity proofing are consistent with the purposes, policies, and provisions of Wisconsin law. Therefore, subject to one exception described in the footnote below,⁶ the Council and the Department intend to apply those MISMO standards when evaluating whether a proposed process of identity proofing is sufficient to produce satisfactory evidence of the identity of the remotely located individual.

That said, the Council and the Department recognize that remote online notarization (and the technologies that enable it) continue to evolve. The Council and the Department are willing to consider approving other mechanisms for identity proofing that are not specified in the MISMO standards below, so long as those alternative mechanisms are reliable and secure. Comments on these standards, including requests to consider alternative means of identity proofing, should be sent to DFINotary@wisconsin.gov.

The applicable MISMO standards for identity proofing are as follows⁷ :

CREDENTIAL ANALYSIS AND AUTHENTICATION

The following authentication and analysis protocols are intended to support the notary public (Notary) in making the determination that satisfactory evidence of each Principal's identity has been established for a Remote Online Notarization.

Principal identity verification for Remote Online Notarization services must include consistent Multi-Factor Authentication procedures:

1. Each Principal's identity credential must be verified against trusted third-party data sources;
2. Each Principal's identity must be bound to each individual Principal following successful Knowledge-Based Authentication, or another form of authentication or trusted third-party identity verification such as online banking authentication; and
3. Procedures must provide for human visual comparison between the Principal's identity credential presented to the Notary and the Principal himself or herself.

Credential Analysis of Government Issued Identification

Remote Online Notarization service providers must use automated software processes to aid the Notary with their role in verifying each

Principal's identity.

1. The credential must pass an authenticity test, consistent with sound commercial practices that:
 1. Use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;
 2. Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;
 3. Use information held or published by the issuing source or authoritative source(s), as available, to confirm the validity of credential details; and
 4. Provide the output of the authenticity test to the Notary.⁸
2. The credential analysis procedure must enable the Notary to visually compare both of the following for consistency:
 1. The information and photo on the presented credential image; and
 2. The Principal as viewed by the Notary in real time through the audio/video system.
3. Credential Type Requirements
 1. Must be a government-issued document meeting the requirements of the State that contains a photograph of the individual, may be imaged, photographed and video recorded under applicable state and federal law, and can be subjected to credential analysis. Credential Image Capture
4. Credential Image Capture
 1. The credential image capture procedure must confirm that:
 1. The Principal is in possession of the credential at the time of the Notarial Act;
 2. Credential images submitted for credential analysis have not been manipulated; and
 3. Credential images match the credential in the Principal's possession.
 2. The following general principles should be considered in the context of image resolution:
 1. Captured image resolution should be sufficient for the service provider to perform credential analysis per the requirements above.
 2. Image resolution should be sufficient to enable visual inspection by the Notary, including legible text and clarity of photographs, barcodes, and other credential features.
 3. All images necessary to perform visual inspection and credential analysis must be captured—e.g., U.S. Passport requires identity page, state driver's licenses require front and back

Dynamic Knowledge-Based Authentication

Dynamic Knowledge-Based Authentication (KBA) is an identity assessment that is based on a set of questions formulated from public or private data sources. A Dynamic Knowledge-Based Authentication procedure must meet the following requirements:

1. Each Principal must answer questions and achieve a passing score.
 1. MISMO recommends:
 1. Five questions drawn from public or private data sources.
 2. A minimum of five possible answer choices per question.
 3. At least four of the five questions answer correctly (a passing score of 80%).
 4. All five questions answered within two minutes.
2. Each Principal to be provided a reasonable number of attempts per Signing Session.
 1. MISMO recommends:
 1. If a Principal fails their first quiz, they may attempt up to two additional quizzes within 48 hours from the first failure.
 2. During any quiz retake, a minimum of 40% (two) of the prior questions must be replaced.
3. The Remote Online Notarization system provider must not include the KBA procedure as part of the video recording or as part of the system-provided person-to-person video interaction between the Notary and the Signatory, and must not store the data or information presented in the KBA questions and answers. However, the output of the KBA assessment procedure must be provided to the Notary.⁹

Workflow Continuity Requirement

If a principal must exit the workflow, they must meet the criteria outlined in this section and restart the Credential Analysis and Authentication workflow from the beginning.

¹[Wis. Stat. ch. 140.145](#)(8, 11).

²[Wis. Stat. ch. 140.145\(3\)\(a\)1](#), [140.07\(1\)](#).

³[Wis. Stat. ch. 140.145\(3\)\(a\)2](#), [140.07\(2\)](#).

⁴[Wis. Stat. ch. 140.145\(3\)\(a\)2](#), [140.145\(1\)\(c\)](#).

⁵[Wis. Stat. ch. 140.145\(11\)\(b\)](#), [140.145\(9\)](#).

⁶The MISMO standards anticipate, but do not give direct guidance on, technologies that would enable identity proofing by biometric means (such as face, voice, or fingerprint recognition). While the Council and the Department will continue to monitor technological developments in this emerging field, at this time they believe additional experience, evidence, and safeguards are needed before they can authorize the use of biometrics as a means of identity proofing. Therefore, that paragraph of the MISMO standards has been

removed from the quoted section below.

⁷Non-substantive footnotes appearing in MISMO's text are omitted herein.

⁸The output may simply indicate a "pass" or "fail" type score, or may provide more information to indicate the outcome of the authenticity test to the Notary.

⁹The output may simply indicate a "pass" or "fail" type score, and/or may provide more information to indicate the outcome of the KBA assessment to the Notary.

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Personal Knowledge Guidance

Most common notarial acts, such as witnessing an individual's signature, require a notary public to have either "personal knowledge or satisfactory evidence" of the identity of that individual.¹ What qualifies as "satisfactory evidence" may vary depending on whether the notarial act occurs in person or via remote means,² but the standards for evaluating whether the notary has "personal knowledge" of the individual are the same regardless of how the notarial act is performed. Whether in person or remote, a notary "has personal knowledge of the identity of an individual appearing before the officer if the individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed."³

While there is no set formula for determining when the notary's prior dealings with an individual are sufficient to provide reasonable certainty as to the individual's identity, courts have noted that it "involves something more than mere casual meetings, and must be based upon a chain of circumstances surrounding the person tending to show that he is the party he purports to be."⁴ Relevant circumstances include the length of time the notary has known the individual, the types of interactions, and the level of information gleaned from these interactions. Before performing a notarial act on the basis of personal knowledge, a notary should ask:

1. Do I have something more than a mere acquaintance with the individual?
2. How long have I known the individual? How many times have we spoken?
3. Have I seen the individual interacting with others? Do these other people know the individual by the same identity as I do?
4. How many times have I seen others I know interact with the individual? Have they identified the individual as the same person I know them to be?
5. Do I have any reasonable doubts about the individual's identity?⁵
6. Am I willing to risk the consequences if I am wrong about the individual's identity?

Notaries should err on the side of caution when assessing these factors, because they can be held liable for damages if they neglect their duties in ascertaining the individual's identity. [Wis. Stat. ch. 140.02\(8\)](#) ("If any notary public shall be guilty of any misconduct or neglect of duty in office the notary public shall be liable to the party injured for all the damages thereby sustained."). While cases imposing liability against notaries for neglecting these duties are rare, they serve as a reminder of the risks notaries assume when they rely on "personal knowledge" without first giving careful consideration to these factors.⁵ If the notary's dealings with the individual are insufficient to provide reasonable certainty that the individual has the identity claimed—or if the notary simply wishes to eliminate that risk—then the notary should require satisfactory evidence of the individual's identity rather than relying on personal knowledge.

¹[Wis. Stat. ch 140.05](#)(1), (2) and (3).

²"Satisfactory evidence" can be attained by reviewing a passport or other government-issued identification (for in-person notarial acts), by implementing more [comprehensive identity proofing measures \(for remote notarial acts\)](#), or via verification by a credible witness known to the notary by personal knowledge or satisfactory evidence of identity. [Wis. Stat. ch. 140.07\(2\)](#).

³[Wis. Stat. ch 140.07\(1\)](#).

⁴*Anderson v. Aronsohn*, 219 P. 1017, 1018 (Cal. Ct. App. 1923).

⁵Notary Tip: Identifying Signers Using Personal Knowledge, NATIONAL NOTARY ASSOCIATION BULLETIN (Nov. 12, 2015), at <https://www.nationalnotary.org/notary-bulletin/blog/2015/11/notaries-use-personal-knowledge-identify-signers>. See also Q&A on "Personally Known," AMERICAN ASSOCIATION OF NOTARIES, at <https://www.notarypublicstamps.com/members/notary-faqs/personally-known>.

⁶For example, in *Anderson*, a notary was found liable for damages for notarizing loan documents for "Louetta" and "Mary" based on purported personal knowledge. Though the notary had been introduced to the individuals and later had several "chance" meetings with them, the California Court of Appeals found these superficial encounters were insufficient to allow the notary to claim reasonable certainty of their identities. *Anderson*, 219 P. at 1018-19. See also, e.g., *Villanueva v. Brown*, 103 F.3d 1128, 1137 (3d Cir. 1997); *State ex rel. Kleinsorge v. Meyer*, 2 Mo. App. 413, 414-22 (Mo. Ct. App. 1876). See generally PETER J. VON ALSTYNE, *The Notary's Duty of Care for Identifying Document Signers*, 32 J. MARSHALL L. REV. 1003 (1999).

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State of Wisconsin

Department of Financial Institutions

Remote Online Notarization: List of Approved Technology Providers

Under Wisconsin law, providers of communication technologies used to perform remote notarial acts must meet certain standards to help ensure that acts performed using their technologies will be accurate, authentic, adequately preserved, and resistant to tampering. The Wisconsin Department of Financial Institutions and the Remote Notary Council have established procedures to approve providers of communication technology for use by Wisconsin notaries when performing remote online notarial acts. To become an approved communication technology provider, the provider must return a completed [application](#) to the Department of Financial Institutions; appear before the Remote Notary Council to answer questions about its technologies, safeguards, and capabilities; and satisfy the Council that its communication technologies meet the standards for providers under Wisconsin law. The following providers make their technologies commercially available and have been approved for use by Wisconsin notaries:

[Amrock](#)[Epic River Healthcare](#)[PandaDoc](#)[Blend](#)[Notarize Genie Inc.](#)[Pavaso](#)[Blue Notary](#)[Notary Hub by Everything
Legal](#)[PoPi/o Mobile](#)[Cyberizeit.com](#)[NotaryCam](#)[Proof \(formerly Notarize\)](#)[Digital Delivery](#)[OneNotary.US](#)[Qualia](#)[DocMagic](#)[OneSpan](#)[Secured Signing](#)[DocuSign](#)[Online Notary Center](#)[SIGNiX](#)[DocVerify](#)[OnlineNotary.us](#)[Simplifile](#)[eNotaryLog](#)[Pactima](#)[Stavvy](#)

This list includes only those approved providers that make their technologies commercially available to Wisconsin notaries. It does not include organizations that have obtained approval for remote online notarization systems solely for internal use by their employed notaries, though the same approval process applies regardless of whether the organization intends to make its communication technology available to notaries outside the organization. For further details, see the agency guidance on remote online notarization posted [here](#)

E-SIGNATURE TECHNOLOGY AND REMOTE WITNESSING
AND NOTARIZATION UNDER WIS. STAT. 140.147 AND 140.145

**REMOTE WITNESSING AND NOTARIZATION
OF ESTATE PLANNING DOCUMENTS IN WISCONSIN**

2024 Wisconsin Solo & Small Firm Conference
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I. INTRODUCTION

In person witnessing and notarization of estate planning documents has always served to ensure the authenticity of a document when the testator, settlor, or principal is no longer able to confirm authenticity. The COVID-19 pandemic created a need to deviate from that. The challenge faced by state governments as they addressed that need has been how to introduce 21st century technology into the document execution process while keeping the safeguards necessary to ensuring the authenticity of each document and minimizing the opportunity for fraud, undue influence, or duress.

II. STATE REACTIONS TO THE PANDEMIC

- A. Executive Orders. In many states, the Governor signed an Executive Order altering the requirements for execution of estate planning documents. The legality and efficacy of such orders depends on the scope of emergency rule-making authority conferred by state law.
- B. Emergency Rule-Making. In some states, administrative departments (e.g. departments of health) or the state's highest court passed emergency rules.

- C. State Statutes. Due to the time required by the legislative process, creating statutory solutions was more of a long-term, permanent solution than an emergency solution.

III. WISCONSIN'S APPROACH

A. First Attempt - Emergency Supreme Court Rules

1. The Real Property, Probate and Trust Law Section of the State Bar of Wisconsin ("RPPT") petitioned the Wisconsin Supreme Court on April 29, 2020 requesting the issuance of emergency procedures for witnessing wills, codicils, powers of attorney for health care, and declarations to health care professionals during the COVID-19 pandemic.
2. The petition focused on interpreting "presence" and "conscious presence" as including the use of audiovisual communication technology.
3. The court declined to issue the requested Order, indicating that legislation would be required instead.

B. Second Attempt - Statutory Changes

1. The RPPT then formed a Remote Practice Committee tasked with coming up with a long-term, statutory solution.
2. 2023 Wisconsin Act 130 was enacted on March 21, 2024 and took effect on March 23, 2024.

C. What it Says and How it Works

1. Estate Planning Documents Defined - Wis. Stat. §140.147(1)
 - a. A will or codicil
 - b. A declaration of trust or other document creating a trust as provided in section 701.0401, or an amendment thereto
 - c. A certification of trust under 701.1013
 - d. A power of attorney for finances and property
 - e. A power of attorney for health care
 - f. A marital property agreement or amendment to a marital property agreement

- g. A written instrument evidencing a nonprobate transfer under sections 705.10, 705.15, 705.18, or 766.58(3)(f)
- h. A declaration to health care professionals
- i. An authorization for final disposition
- j. An authorization for use and disclosure of protected health information (HIPAA authorization)
- k. An instrument of disclaimer under 854.13
- l. An instrument exercising a power of appointment under Chapter 702

2. Other Definitions

- a. Remotely located individual - an individual who is not in the physical presence of the notary public who performs a notarial act under new section 140.147.
- b. Sign - with respect to a remotely located individual, the execution of an estate planning document that is required or intended to be executed in the presence of a notary public.

3. Uniform Requirements for all Estate Planning Documents

- a. 2-way, real-time audiovisual communication technology
 - (1) Zoom, Teams, Webex, Go To Meeting, and Facetime are all examples of 2-way, real-time audiovisual communication technology.
 - (2) The audiovisual communication technology must allow the parties to see, hear, and interact in real time. If any party has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that party to interact in real time. For example, sign language may be substituted for sound for a deaf person.
- b. Must be supervised by an attorney in good standing licensed to practice law in Wisconsin. The supervising attorney may also serve as the notary public and one of the witnesses.

- c. All parties must attest to being physically located in Wisconsin during the 2-way, real-time audiovisual communication.
- d. The person signing (remotely located individual, testator, settlor, principal, etc.) and each remote witness must identify themselves. If the parties are not known to each other and the supervising attorney, each party must display a photo identification (e.g. driver's license, state-issued identification card, passport, military ID, etc.).
- e. The person signing (remotely located individual, testator, settlor, principal, etc.) must identify anyone else present in the same physical location and, if possible, make a visual sweep of the surroundings so that the supervising attorney, notary public, and witnesses can confirm the presence of any other person.
- f. The person signing must display the document, confirm the total number of pages, and the page number of the page on which that person's signature will be affixed.
- g. The person signing must declare to the supervising attorney, notary public, and/or witnesses that the person signing:
 - (1) is 18 years of age or older;
 - (2) that the document is the signer's will, codicil, trust, power of attorney, etc. (whichever applies); and
 - (3) that the document is being executed as a free and voluntary act.
- h. Where current law allows another person to assist the person signing or to sign in that person's name at that person's direction, those provisions of current law are retained.
- i. The document being signed must indicate that it is being executed pursuant to the applicable remote signing statute (see below).
- j. The supervising attorney, notary public, and each of the witnesses must be able to see the person signing actually sign the document. A view of the signer's head and shoulders, for example, is not sufficient, nor is a ceiling shot if the signer has to temporarily put down a phone or tablet to be able to sign the document.
- k. Transmission of the signed document, and counterparts versus compilation.

(1) Option 1 - Same Document

- (a) Option 1 only involves one original document or documents. The person signing or someone at the signer's direction delivers the document(s) personally or by U.S. mail or commercial courier to the supervising attorney, who then forwards the original document(s) to the notary public or first witness. In the case of witnessing, the first witness signs and forwards the document(s) to the second witness, who then signs and forwards the document(s) back to the supervising attorney.
- (b) Where the supervising attorney and an office assistant serve as the notary public and witnesses from the attorney's office, this is perhaps the easiest option because it only requires the remotely located signer to deliver the document(s) to the supervising attorney. The subsequent notarization and witnessing can all occur in the attorney's office.
- (c) If the supervising attorney meets with the signer at the signer's home or another location outside the attorney's office, the ability to have someone witness remotely eliminates the need to have the attorney bring a second witness with him or her, as well as for the signer to ask a friend or neighbor to act as a second witness.

(2) Option 2 - Copies of Signed Document

- (a) Option 2 starts out with one set of original documents and copies are made by the person signing *after* he/she signs. The person signing or someone at the signer's direction delivers the original signed document(s) personally or by U.S. mail or commercial courier to the supervising attorney, and delivers copies of the entire signed document(s) to the notary public and each witness, who then notarize and/or sign and forward the document(s) back to the supervising attorney.
- (b) The multiple documents together will constitute one original unless the supervising attorney, within a reasonable time after receiving the signed original

and signed copies, compiles the signed copies into the original by attaching the signature pages of the notary public and/or each remote witness to the signed original.

- (c) Option 2 might be used, for example, where the supervising attorney is working remotely and does not have the ability to print and mail originals but the client does. The client can receive a PDF by e-mail, print and sign it, then make copies and forward it as instructed. Option 2 should take less time than option 1 because the document does not have to go back to the supervising attorney before being sent to the notary public and witnesses.

(3) Option 3 - Counterpart Originals

- (a) In option 3 the notary public and each remote witness starts out with an identical counterparts of each document that the person signing has. During the signing, the person signing signs, and then the notary public and each remote witness notarizes or signs the counterparts in their possession. Once all the documents have been signed, the person signing, the notary public, and each remote witness delivers those documents personally or by U.S. mail or commercial courier to the supervising attorney.
- (b) The multiple documents together will constitute one original unless the supervising attorney, within a reasonable time after receiving the multiple documents, compiles them into one document by attaching the signature pages of the notary public and/or each remote witness to the document signed by the person signing.
- (c) This option seems preferable to option 2 because all parties are starting out with identical versions of the same document and it does not require the person signing to send anything to the notary public or witnesses - just to the supervising attorney.
- (d) Option 3 is also preferable to both options 1 and 2 in that the notary public and each remote witness are signing at the same time as the person signing and each is seeing the other sign. The added delay

of the notary public and each remote witness waiting to receive documents to sign is eliminated.

1. An affidavit of compliance must be completed by the supervising attorney and attached to the document.
 - (1) For the typical Wisconsin estate plan for a married couple, this means a separate affidavit of compliance for the trust and marital property agreement, and each will, power of attorney, HIPAA authorization, and other document.
 - (2) Each statute contains a sample affidavit, and all the affidavits are more or less identical.
 - (3) If a document, such as a power of attorney for finances and property, is going to be witnessed and notarized, section 140.147(6) specifically authorizes combining the information required by the separate affidavits into a single affidavit.
 - (4) In the case of a Will, the affidavit of compliance can also serve as a self-proving affidavit under Wis. Stat. §853.04(2).
 - (5) An affidavit of compliance may include other details regarding the document execution process, such as when a remotely located individual directs another person to sign on his or her behalf.
 - (6) See the attached sample affidavit of compliance for a Will in Appendix A.

IV. WITNESSING

- A. Remote witnesses must still meet all the same requirements as in-person witnesses for each estate planning document, such as being 18 or older, unrelated, etc.
- B. Remote witnesses should have photo identification and should be tech-savvy enough to be able to easily connect and interact using the 2-way, real-time audiovisual communication technology.
- C. If one or both remote witnesses are in a different location than the supervising attorney, consider a dry run with each witness or leave sufficient time to work out

all of the bugs before formally starting the remote signing process. For example, do not use the free version of Zoom that times out after one hour.

- D. If the signer or a witness is in an area with spotty cellular or internet service, make sure that the signing process will not be interrupted by a dropped signal. If presence or conscious presence is required during the signing process, a remote witness dropping off of a virtual signing has the same legal effect as a witness leaving the room during an in-person signing.

V. NOTARIZATION

A. RIN versus RON

1. On May 21, 2020, Wis. Stat. §140.145, Notarial act performed for remotely located individual, became law.
 - a. This section authorizes remote online notarization (“RON”) and uses electronic (digital) signatures.
 - b. This section does not apply to wills, codicils, testamentary trusts, living trusts and trust amendments not involving a transaction under section 137.11(15), powers of attorney not involving a transaction under section 137.11(15), marital property agreements, powers of attorney for health care, declarations to health care professionals, or HIPAA authorizations. These were specifically excluded to give the RPPT time to first study remote witnessing and ensure that traditional safeguards regarding the execution of estate planning documents would be preserved before remote notarization was also allowed.
 - c. RON was spearheaded by the Wisconsin Land Title Association and is most often used in connection with real estate transactions.
 - d. A limited power of attorney specifically executed to authorize an agent to execute a real estate transaction can be executed using RON instead of RIN. While it was generally understood this was always the case under RON, 2023 Wisconsin Act 129 providing further clarity was enacted on March 21, 2024 and took effect on March 23, 2024.
2. New section 140.147 authorizes remote ink (“RIN”) or “wet” signatures. This section only applies to estate planning documents as defined in 140.147(1).

- 3. RIN requires the remotely located individual to be located in Wisconsin during the signing. This requirement is different than under RON.
- B. Under RIN, the notary public must hold a current Wisconsin commission and be physically present in Wisconsin.

VI. THE STATUTES AND SUGGESTED LANGUAGE FOR DOCUMENTS

- A. 140.147 - Notarial act performed for remote execution of estate planning documents.

Appearing before me on the _____ day of _____, 20____, via two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §140.147, the above-named **NAME** executed the foregoing instrument and acknowledged the same.

- B. 154.03(3) - “Presence” for purposes of signing a declaration to health care professionals includes the simultaneous remote appearance by 2-way, real-time audiovisual communication if all of the requirements are met.

The execution of this instrument was witnessed using two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §154.03(3).

- C. 154.30(8m) - “Witnessed by” and “in the presence of” for purposes of signing an authorization for final disposition include the simultaneous remote appearance by 2-way, real-time audiovisual communication if all of the requirements are met.

The execution of this instrument was witnessed using two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §154.30(8m).

- D. 155.10(3) - “In the presence of” for purposes of signing a power of attorney for health care includes the simultaneous remote appearance by 2-way, real-time audiovisual communication if all of the requirements are met.

The execution of this instrument was witnessed using two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §155.10(3).

- E. 244.05(3) - A signature of the principal on a power of attorney for finances and property, or the signature of a person signing on behalf of the principal, is presumed to be genuine if the signing is witnessed by 2 witnesses via simultaneous remote appearance by 2-way, real-time audiovisual communication if all of the requirements are met.

The execution of this instrument was witnessed using two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §244.05.

- F. 853.03(2)(c) - “Conscious presence” for purposes of the execution of a will or codicil includes the simultaneous remote appearance by 2-way, real-time audiovisual communication if all of the requirements are met.

Appearing before us, the undersigned, via two-way, real-time audiovisual communication technology pursuant to Wis. Stat. §853.03(2)(c), the foregoing instrument consisting of NUMBER (#) pages, including this/the-next page, was on the date hereof signed, sealed, published and declared by JANE DOE to be her Last Will and Testament. On that basis we have subscribed our names as witnesses hereto and we further certify that at the time of the execution of the foregoing Will, we believed JANE DOE to be of sound and disposing mind and memory.

- G. For purposes of uniformity, section 154.03(3)(e) was added to require that a witness to a declaration to health care professionals be 18 or older, and 154.30(8)(d)2. was added to require that anyone signing an authorization for final disposition for a declarant at the declarant’s express direction be 18 or older.

VII. USES AND CAUTIONS

- A. If a COVID resurgence or another pandemic ever requires complete isolation, remote witnessing and notarization will be used out of necessity.
- B. Even in circumstances in which only those most at risk are isolated during a health emergency, remote witnessing and notarization will likely be needed for clients at risk.
- C. Remote witnessing and notarization will be a cost-saving convenience for clients in remote areas who cannot or desire not to travel to their attorney for an in-person signing, as well as for those who may be physically frail or infirm and cannot easily travel any distance for an in-person signing.
- D. Consider when remote witnessing and notarization should not be used unless absolutely necessary.
1. When the estate plan does something out of the ordinary, such as disinherit a natural object of the testator’s or settlor’s bounty.
 2. When the testator/settlor/principal is a person with diminished capacity.
 3. Where the internet connection is unreliable and drops out or freezes during the meeting.

4. Where the remotely located individual is not tech-savvy or has difficulty participating in remote audio-visual communication.

VIII. HELPFUL TIPS

- A. Prepare template affidavits for each of your most common signing scenarios; eg., a joint revocable living trust.
- B. Prepare the affidavits of compliance in advance of the meeting. It will help you orchestrate the meeting in your mind, and help ensure that they are completed promptly after the documents are returned.
- C. Things to communicate to the client in advance of the meeting:
 1. The need to produce a driver's license if not all those involved are known to each other.
 2. The need to see the actual signing, not just head and shoulders.
 3. The need for those signing (client, witnesses, and notary) to remain in the room and in front of the camera for the entire process.
 4. The need to make a visual sweep of the room.
- D. Get all the attestations and declarations out of the way at the beginning if there are multiple documents being signed.
- E. Keep the order of remote witness 1 and remote witness 2 the same for all witnessed documents.
- F. Use a checklist to ensure compliance with the statutes and no missed steps.

IX. CONCLUSION

At first blush, remote witnessing and remote ink notarization of estate planning documents in Wisconsin appears burdensome. However, the uniform approach for all estate planning documents and the form affidavit provided in each statute should shorten the learning curve and, more importantly, should ensure the authenticity of each remotely-executed document.

APPENDIX A

STATE OF WISCONSIN)
) SS.
COUNTY OF MILWAUKEE)

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

This Affidavit of Compliance is executed pursuant to Wis. Stats. §853.03(2)(c) to document the execution of the Last Will and Testament of John Doe via remote appearance by 2-way, real-time audiovisual communication technology on March 25, 2024.

1. The name and residential address of the testator is: John Doe, 9045 Woodruff Road, Woodruff WI 54568.
2. The name and business address of remote witness 1 is: Catherine M. Priebe, 10700 W. Research Drive, Suite 165, Milwaukee, WI 53226.
3. The name and business address of remote witness 2 is: Philip J. Miller, 511 North Broadway, Suite 1100, Milwaukee, WI 53202.
4. The address within the State of Wisconsin where the testator was physically located at the time the testator signed the will is: 9045 Woodruff Road, Woodruff WI 54568.
5. The address within the State of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the testator's execution of the will is: 10700 W. Research Drive, Suite 165, Milwaukee, WI 53226.
6. The address within the State of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the testator's execution of the will is: 511 North Broadway, Suite 1100, Milwaukee, WI 53202.
7. The testator and remote witness 1 were known to each other. Remote witness 1 and remote witness 2 were known to each other. The testator and remote witness 2 were not known to each other, therefore the testator and remote witness 2 each produced a current Wisconsin driver's license to confirm his identity.
8. The testator declared that the testator is 18 years of age or older, that the document is the testator's will, and that the document was being executed as the testator's free and voluntary act.
9. Each of the remote witnesses and the supervising attorney were able to see the testator sign. The testator appeared to be 18 years of age or older and acting freely and voluntarily.
10. The audiovisual technology used for the signing process was Zoom.

11. The will was not signed in counterpart. The testator signed the will and delivered it to remote witness 2 by Federal Express, who then signed it and forwarded it to remote witness 1 by Federal Express. Remote witness 1 is also the supervising attorney.
12. The name, state bar number, and business address of the supervising attorney is: Catherine M. Priebe, SBN 1021649, 10700 W. Research Drive, Suite 165, Milwaukee, WI 53226.

Catherine M. Priebe

Subscribed and sworn to before me on
March 25, 2024 by Catherine M. Priebe.

Print Name: _____

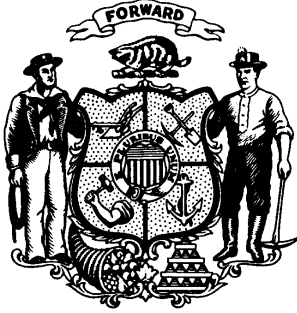
Notary Public, State of Wisconsin

My Commission expires: _____

APPENDIX B

2023 Wisconsin Act 130 - See attached.

State of Wisconsin



2023 Senate Bill 898

Date of enactment: **March 21, 2024**

Date of publication*: **March 22, 2024**

2023 WISCONSIN ACT 130

AN ACT *to amend* 154.30 (8) (d) 2.; *to repeal and recreate* 244.05; and *to create* 140.147, 154.03 (1) (e), 154.03 (3), 154.30 (8m), 155.10 (3) and 853.03 (2) (c) of the statutes; **relating to:** electronic and remote witnessing and notarization of estate planning documents.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 140.147 of the statutes is created to read:

140.147 Notarial act performed for remote execution of estate planning documents. (1) In this section:

(a) "Estate planning document" means any of the following:

1. A will or a codicil.
2. A declaration of trust or other document creating a trust as provided in s. 701.0401 or an amendment to a declaration of trust or other document creating a trust.
3. A certification of trust as provided in s. 701.1013.
4. A power of attorney for finances and property.
5. A power of attorney for health care.
6. A marital property agreement or an amendment to a marital property agreement.
7. A written instrument evidencing a nonprobate transfer pursuant to s. 705.10, 705.15, 705.18, or 766.58 (3) (f).
8. A declaration to health care professionals.
9. An authorization for final disposition.
10. An authorization for use and disclosure of protected health information.
11. An instrument of disclaimer under s. 854.13.

12. An instrument exercising a power of appointment under ch. 702.

(b) "Remotely located individual" means an individual who is not in the physical presence of the notary public who performs the notarial act pursuant to this section.

(c) "Sign" means, with respect to a remotely located individual, the execution of an estate planning document that is required or intended to be executed in the presence of a notary public.

(2) (a) An estate planning document may not be denied legal effect or enforceability relating to a transaction solely because a notarial act was performed in compliance with this section.

(b) Except as provided in par. (a), this section shall not apply to, or impact the legal effect or enforceability of, any electronic records or electronic signatures governed by ch. 137.

(3) For purposes of signing an estate planning document, a remotely located individual may comply with s. 140.06 by appearing before a notary public via 2-way, real-time audiovisual communication technology if all of the following requirements are satisfied:

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

(a) The signing is supervised by an attorney in good standing licensed to practice law in this state. The supervising attorney may serve as the notary public.

(b) The remotely located individual attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(c) The notary public attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(d) The remotely located individual positively confirms the remotely located individual's identity. If the remotely located individual is not personally known to the notary public and the supervising attorney, the remotely located individual shall provide satisfactory evidence of the remotely located individual's identity as provided in s. 140.07.

(e) The remotely located individual identifies anyone else present in the same physical location as the remotely located individual. If possible, the remotely located individual shall make a visual sweep of the remotely located individual's physical surroundings so that the notary public and the supervising attorney can confirm the presence of any other persons.

(f) The remotely located individual displays the estate planning document, confirms the total number of pages and the page number on which the remotely located individual's signature is to be affixed, and declares to the notary public and the supervising attorney that the remotely located individual is 18 years of age or older, that the document is the remotely located individual's estate planning document, and that the document is being executed as a voluntary act.

(g) The remotely located individual, or another individual 18 years of age or older authorized to sign on behalf of the remotely located individual at the express direction and in the physical presence of the remotely located individual, signs the estate planning document in a manner that allows the notary public and the supervising attorney to see the signing. If the estate planning document is signed by someone on behalf of the remotely located individual, the signing shall comply with s. 140.09.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the remotely located individual, the notary public, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The estate planning document indicates that it is being executed pursuant to this section.

(j) One of the following occurs:

1. The remotely located individual, or another person at the direction of the remotely located individual, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original estate planning document to the supervising attorney within a reasonable time after the signing. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original estate planning document to the notary public within a reasonable time. The notary public then performs the intended notarial act and forwards the entire original estate planning document by personal delivery or U.S. mail or commercial courier service to the supervising attorney within a reasonable time.

2. The remotely located individual, or another person at the direction of the remotely located individual, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original estate planning document to the supervising attorney within a reasonable time after the signing and transmits by facsimile or electronic means a legible copy of the entire signed estate planning document directly to the notary public within a reasonable time after the signing. The notary public then performs the intended notarial act and personally delivers or transmits by U.S. mail or commercial courier service the entire signed copy of the estate planning document to the supervising attorney within a reasonable time. The signed original and signed copy together shall constitute one original document unless the supervising attorney, within a reasonable time after receiving the signed original and signed copy, compiles the signed original and signed copy into one document by attaching the page or pages containing the notarial act to the original signed by or on behalf of the remotely located individual, in which case the compiled document shall constitute the original.

3. The remotely located individual, or another person at the express direction of the remotely located individual, and the notary public sign identical copies of the original estate planning document. The remotely located individual, or another person at the direction of the remotely located individual, and the notary public personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after the signing and performance of the notarial act. All of the originals together shall constitute one document unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the page or pages containing the notarial act to the original signed by or on behalf of the remotely located individual, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes and attaches to the estate planning document an affidavit of compliance that contains the following information:

1. The name and residential address of the remotely located individual.

2. The name and residential or business address of the notary public.

3. The address within the state where the remotely located individual was physically located at the time that the estate planning document was signed by the remotely located individual or another individual on behalf of the remotely located individual.

4. The address within the state 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.

5. A statement that the remotely located individual and notary public were known to each other and the supervising attorney or a description of the form of identification used to confirm the identity of the remotely located individual.

6. The identity of anyone else present in the same physical location as the remotely located individual during the signing.

7. Confirmation that 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 estate planning document, and that the document was being executed as the remotely located individual's voluntary act.

8. Confirmation that the notary public and the supervising attorney were able to see the remotely located individual, or an individual 18 years of age or older at the express direction and in the physical presence of the remotely located individual, sign, and that the remotely located individual appeared to be 18 years of age or older and acting voluntarily.

9. A description of the audiovisual technology used for the signing process.

10. If the estate planning document was not signed in counterpart, a description of the method used to forward the estate planning document to the notary public and to the supervising attorney upon completion of the signing process.

11. If the estate planning document was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document.

12. The name, state bar number, and business or residential address of the supervising attorney.

13. Any other information that the supervising attorney considers to be material with respect to the remotely located individual's capacity to sign a valid estate planning document, the remotely located individual's and

notary public's compliance with this section, or any other information that the supervising attorney deems relevant to the signing of the estate planning document.

(4) An affidavit of compliance completed and attached to the estate planning document pursuant to sub. (3) (k) shall serve as conclusive evidence that the estate planning document was executed in compliance with this section.

(5) An affidavit of compliance shall be in substantially the following form:

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:]

(6) If a supervising attorney is required to complete an affidavit in order to execute an estate planning document pursuant to another provision of law, the information required in that affidavit may be combined with the information required in the affidavit of compliance into a single affidavit.

(7) For a notarial act performed under this section, the certificate of notarial act required under s. 140.15 may be in the following short form, if completed with the information required by s. 140.15 (1) and (2):

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:]

SECTION 2. 154.03 (1) (e) of the statutes is created to read:

154.03 (1) (e) Under the age of 18.

SECTION 3. 154.03 (3) of the statutes is created to read:

154.03 (3) For purposes of this section, “presence” includes the simultaneous remote appearance by 2–way, real–time audiovisual communication technology if all of the following conditions are satisfied:

(a) The signing is supervised by an attorney in good standing licensed by this state. The supervising attorney may serve as one of the remote witnesses.

(b) The declarant attests to being physically located in this state during the 2–way, real–time audiovisual communication.

(c) Each remote witness attests to being physically located in this state during the 2–way, real–time audiovisual communication.

(d) The declarant and each of the remote witnesses identify themselves. If the declarant and remote witnesses are not personally known to each other and to the supervising attorney, the declarant and each of the remote witnesses display photo identification.

(e) The declarant identifies anyone else present in the same physical location as the declarant and, if possible, the declarant makes a visual sweep of the declarant’s physical surroundings so that the supervising attorney and each remote witness can confirm the presence of any other person.

(f) The declarant displays the declaration to health care professionals, confirms the total number of pages and the page number of the page on which the declarant’s signature will be affixed, and declares to the remote witnesses and the supervising attorney all of the following:

1. That the declarant is 18 years of age or older.

2. That the document is a declaration to health care professionals.

3. That the document is being executed as a voluntary act.

(g) The declarant, or an individual 18 years of age or older at the express direction and in the physical presence of the declarant, dates and signs the declaration to health care professionals in a manner that allows each of the remote witnesses and the supervising attorney to see the execution.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the declarant, a remote witness, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The declaration to health care professionals indicates that it is being executed pursuant to this subsection.

(j) One of the following occurs:

1. The declarant, or another person at the direction of the declarant, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original declaration to health care professionals to the supervising attorney within a reasonable time after execution. The supervising attorney then personally delivers or

transmits by U.S. mail or commercial courier service the entire signed original declaration to health care professionals to the remote witnesses within a reasonable time. The first remote witness to receive the original declaration to health care professionals signs and dates the original declaration to health care professionals as a witness and forwards the entire signed original declaration to health care professionals by personal delivery or U.S. mail or commercial courier service within a reasonable time to the 2nd remote witness, who signs and dates it as a witness and forwards the entire signed original declaration to health care professionals by personal delivery or U.S. mail or commercial courier service within a reasonable time to the supervising attorney.

2. The declarant, or another person at the direction of the declarant, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original declaration to health care professionals to the supervising attorney within a reasonable time after execution, and transmits by facsimile or electronic means a legible copy of the entire signed declaration to health care professionals directly to each remote witness within a reasonable time after execution. Each remote witness then signs the transmitted copy of the declaration to health care professionals as a witness and personally delivers or transmits by U.S. mail or commercial courier service the entire signed copy of the declaration to health care professionals to the supervising attorney within a reasonable time after witnessing. The signed original and signed copies together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving the signed original and signed copies, compiles the signed original and signed copies into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the declarant, in which case the compiled document shall constitute the original.

3. The declarant and each of the remote witnesses sign identical copies of the original. The declarant, or another person at the direction of the declarant, and each of the remote witnesses personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after execution. All of the signed originals together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the declarant, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes an affidavit of compliance that contains the following information:

1. The name and residential address of the declarant.
2. The name and residential or business address of each remote witness.

3. The address within this state where the declarant was physically located at the time the declarant signed the declaration to health care professionals.

4. The address within this state where each remote witness was physically located at the time the remote witness witnessed the declarant's execution of the declaration to health care professionals.

5. A statement that the declarant and remote witnesses were all known to each other and the supervising attorney or a description of the form of photo identification used to confirm the identity of the declarant and each remote witness.

6. Confirmation that the declarant declared that the declarant is 18 years of age or older, that the document is the declarant's declaration to health care professionals, and that the document was being executed as the declarant's voluntary act.

7. Confirmation that each of the remote witnesses and the supervising attorney were able to see the declarant, or an individual 18 years of age or older at the express direction and in the physical presence of the declarant, sign, and that the declarant appeared to be 18 years of age or older and acting voluntarily.

8. A description of the audiovisual technology used for the signing process.

9. If the declaration to health care professionals was not signed in counterpart, a description of the method used to forward the declaration to health care professionals to each remote witness for signing and to the supervising attorney after signing.

10. If the declaration to health care professionals was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document containing the declaration to health care professionals, the signature of the declarant, and the signatures of the remote witnesses.

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

12. Any other information that the supervising attorney considers to be material with respect to the declarant's capacity to sign a valid declaration to health care professionals, the declarant's and witnesses' compliance with this section, or any other information that the supervising attorney deems relevant to the execution of the declaration to health care professionals.

(L) The affidavit of compliance is attached to the declaration to health care professionals.

(m) An affidavit of compliance described in this subsection shall be substantially in the following form:

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. § 154.03 (3) to document the execution of the declaration to health care professionals of [name of declarant] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the declarant is

2. The name and [residential or business] address of remote witness 1 is

3. The name and [residential or business] address of remote witness 2 is

4. The address within the state of Wisconsin where the declarant was physically located at the time the declarant signed the declaration to health care professionals is

5. The address within the state of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the declarant's execution of the declaration to health care professionals is

6. The address within the state of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the declarant's execution of the declaration to health care professionals is

7. The declarant and remote witnesses were all known to each other and to the supervising attorney. – OR – The declarant and remote witnesses were not all known to each other and to the supervising attorney. Each produced the following form of photo identification to confirm his or her identity:

....

8. The declarant declared that the declarant is 18 years of age or older, that the document is the declarant's declaration to health care professionals, and that the document was being executed as the declarant's voluntary act.

9. Each of the remote witnesses and the supervising attorney were able to see the declarant sign. The declarant appeared to be 18 years of age or older and acting voluntarily.

10. The audiovisual technology used for the signing process was

11. The declaration to health care professionals was not signed in counterpart. The following methods were used to forward the declaration to health care professionals to each remote witness for signing and to the supervising attorney after signing. – OR – The declaration to health care professionals 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 declaration to health care professionals, the signature of the declarant, and the signatures of the remote witnesses on [date] by [e.g., attaching page 7 from each counterpart signed by a remote witness to the back of the declaration to health care professionals signed by the declarant].

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

13. [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:]

SECTION 4. 154.30 (8) (d) 2. of the statutes is amended to read:

154.30 (8) (d) 2. Be signed and dated by the declarant, with the signature witnessed by 2 witnesses who each have attained age 18 and who are not related by blood, marriage, or adoption to the declarant, or acknowledged before a notary public. If the declarant is physically unable to sign an authorization for final disposition, the authorization shall be signed in the declarant's name by an individual 18 years of age or older at the declarant's express direction and in his or her physical presence; such a proxy signing shall take place or be acknowledged by the declarant in the presence of 2 witnesses or a notary public.

SECTION 5. 154.30 (8m) of the statutes is created to read:

154.30 (8m) REMOTE EXECUTION. For purposes of sub. (8) (d) 2., "witnessed by" and "in the presence of" include the simultaneous remote appearance by 2-way, real-time audiovisual communication technology if all of the following conditions are satisfied:

(a) The signing is supervised by an attorney in good standing licensed by this state. The supervising attorney may serve as one of the remote witnesses.

(b) The declarant attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(c) Each remote witness attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(d) The declarant and each of the remote witnesses identify themselves. If the declarant and remote witnesses are not personally known to each other and to the supervising attorney, the declarant and each of the remote witnesses display photo identification.

(e) The declarant identifies anyone else present in the same physical location as the declarant and, if possible, the declarant makes a visual sweep of the declarant's physical surroundings so that the supervising attorney and each remote witness can confirm the presence of any other person.

(f) The declarant displays the authorization for final disposition, confirms the total number of pages and the page number of the page on which the declarant's signa-

ture will be affixed, and declares to the remote witnesses and the supervising attorney all of the following:

1. That the declarant is 18 years of age or older.
2. That the document is an authorization for final disposition.
3. That the document is being executed as a voluntary act.

(g) The declarant, or an individual 18 years of age or older at the express direction and in the physical presence of the declarant, dates and signs the authorization for final disposition in a manner that allows each of the remote witnesses and the supervising attorney to see the execution.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the declarant, a remote witness, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The authorization for final disposition indicates that it is being executed pursuant to this subsection.

(j) One of the following occurs:

1. The declarant, or another person at the direction of the declarant, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original authorization for final disposition to the supervising attorney within a reasonable time after execution. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original authorization for final disposition to the remote witnesses within a reasonable time. The first remote witness to receive the original authorization for final disposition signs and dates the original authorization for final disposition as a witness and forwards the entire signed original authorization for final disposition by personal delivery or U.S. mail or commercial courier service within a reasonable time to the 2nd remote witness, who signs and dates it as a witness and forwards the entire signed original authorization for final disposition by personal delivery or U.S. mail or commercial courier service within a reasonable time to the supervising attorney.

2. The declarant, or another person at the direction of the declarant, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original authorization for final disposition to the supervising attorney within a reasonable time after execution, and transmits by facsimile or electronic means a legible copy of the entire signed authorization for final disposition directly to each remote witness within a reasonable time after execution. Each remote witness shall then sign the transmitted copy of the authorization for final disposition

as a witness and personally deliver or transmit by U.S. mail or commercial courier service the entire signed copy of the authorization for final disposition to the supervising attorney within a reasonable time after witnessing. The signed original and signed copies together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving the signed original and signed copies, compiles the signed original and signed copies into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the declarant, in which case the compiled document shall constitute the original.

3. The declarant and each of the remote witnesses sign identical copies of the original. The declarant, or another person at the direction of the declarant, and each of the remote witnesses personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after execution. All of the signed originals together shall constitute one original document unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the signature pages of each remote witness to the original signed by the declarant, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes an affidavit of compliance that contains the following information:

1. The name and residential address of the declarant.
2. The name and residential or business address of each remote witness.
3. The address within this state where the declarant was physically located at the time the declarant signed the authorization for final disposition.
4. The address within this state where each remote witness was physically located at the time the remote witness witnessed the declarant's execution of the authorization for final disposition.
5. A statement that the declarant and remote witnesses were all known to each other and the supervising attorney or a description of the form of photo identification used to confirm the identity of the declarant and each remote witness.

6. Confirmation that the declarant declared that the declarant is 18 years of age or older, that the document is the declarant's authorization for final disposition, and that the document was being executed as the declarant's voluntary act.

7. Confirmation that each of the remote witnesses and the supervising attorney were able to see the declarant, or an individual 18 years of age or older at the express direction and in the physical presence of the declarant, sign, and that the declarant appeared to be 18 years of age or older and acting voluntarily.

8. A description of the audiovisual technology used for the signing process.

9. If the authorization for final disposition was not signed in counterpart, a description of the method used to forward the authorization for final disposition to each remote witness for signing and to the supervising attorney after signing.

10. If the authorization for final disposition was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document containing the authorization for final disposition, the signature of the declarant, and the signatures of the remote witnesses.

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

12. Any other information that the supervising attorney considers to be material with respect to the declarant's capacity to sign a valid authorization for final disposition, the declarant's and witnesses' compliance with this section, or any other information that the supervising attorney deems relevant to the execution of the authorization for final disposition.

(L) The affidavit of compliance is attached to the authorization for final disposition.

(m) An affidavit of compliance described in this subsection shall be substantially in the following form:

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. § 154.30 (8m) to document the execution of the authorization for final disposition of [name of declarant] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the declarant is

2. The name and [residential or business] address of remote witness 1 is

3. The name and [residential or business] address of remote witness 2 is

4. The address within the state of Wisconsin where the declarant was physically located at the time the declarant signed the authorization for final disposition is

5. The address within the state of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the declarant's execution of the authorization for final disposition is

6. The address within the state of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the declarant's execution of the authorization for final disposition is

7. The declarant and remote witnesses were all known to each other and to the supervising attorney. – OR

– The declarant and remote witnesses were not all known to each other and to the supervising attorney. Each produced the following form of photo identification to confirm his or her identity:

....

8. The declarant declared that the declarant is 18 years of age or older, that the document is the declarant's authorization for final disposition, and that the document was executed as the declarant's voluntary act.

9. Each of the remote witnesses and the supervising attorney were able to see the declarant, or an individual 18 years of age or older at the express direction and in the physical presence of the declarant, sign. The declarant appeared to be 18 years of age or older and acting voluntarily.

10. The audiovisual technology used for the signing process was

11. The authorization for final disposition was not signed in counterpart. The following methods were used to forward the authorization for final disposition to each remote witness for signing and to the supervising attorney after signing. – OR – The authorization for final disposition 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 authorization for final disposition, the signature of the declarant, and the signatures of the remote witnesses on [date] by [e.g., attaching page 7 from each counterpart signed by a remote witness to the back of the authorization for final disposition signed by the declarant].

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

13. [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:]

SECTION 6. 155.10 (3) of the statutes is created to read:

155.10 (3) For purposes of sub. (1) (c), "in the presence of" includes the simultaneous remote appearance by 2-way, real-time audiovisual communication technology if all of the following conditions are satisfied:

(a) The signing is supervised by an attorney in good standing licensed by this state. The supervising attorney may serve as one of the remote witnesses.

(b) The principal attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(c) Each remote witness attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(d) The principal and each of the remote witnesses identify themselves. If the principal and remote witnesses are not personally known to each other and to the supervising attorney, the principal and each of the remote witnesses display photo identification.

(e) The principal identifies anyone else present in the same physical location as the principal and, if possible, the principal makes a visual sweep of the principal's physical surroundings so that the supervising attorney and each remote witness can confirm the presence of any other person.

(f) The principal displays the power of attorney for health care, confirms the total number of pages and the page number of the page on which the principal's signature will be affixed, and declares to the remote witnesses and the supervising attorney all of the following:

1. That the principal is 18 years of age or older.
2. That the document is the principal's power of attorney for health care.
3. That the document is being executed as a voluntary act.

(g) The principal, or an individual 18 years of age or older at the express direction and in the physical presence of the principal, dates and signs the power of attorney for health care in a manner that allows each of the remote witnesses and the supervising attorney to see the execution.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the principal, a remote witness, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The power of attorney for health care indicates that it is being executed pursuant to this subsection.

(j) One of the following occurs:

1. The principal, or another person at the direction of the principal, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney for health care to the supervising attorney within a reasonable time after execution. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney for health care to the remote witnesses within a reasonable time. The first remote witness to receive the original power of attorney for health care signs and dates the original power of attorney for health care as a witness and forwards the entire signed original power of attorney for health care by personal delivery or U.S. mail or commercial courier service

within a reasonable time to the 2nd remote witness, who signs and dates it as a witness and forwards the entire signed original power of attorney for health care by personal delivery or U.S. mail or commercial courier service within a reasonable time to the supervising attorney.

2. The principal, or another person at the direction of the principal, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney for health care to the supervising attorney within a reasonable time after execution and transmits by facsimile or electronic means a legible copy of the entire signed power of attorney for health care directly to each remote witness within a reasonable time after execution. Each remote witness then signs the transmitted copy of the power of attorney for health care as a witness and personally delivers or transmits by U.S. mail or commercial courier service the entire signed copy of the power of attorney for health care to the supervising attorney within a reasonable time after witnessing. The signed original and signed copies together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving the signed original and signed copies, compiles the signed original and signed copies into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the principal, in which case the compiled document shall constitute the original.

3. The principal and each of the remote witnesses sign identical copies of the original. The principal, or another person at the direction of the principal, and each of the remote witnesses personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after execution. All of the signed originals together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the principal, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes an affidavit of compliance that contains the following information:

1. The name and residential address of the principal.
2. The name and residential or business address of each remote witness.
3. The address within this state where the principal was physically located at the time the principal signed the power of attorney for health care.
4. The address within this state where each remote witness was physically located at the time the remote witness witnessed the principal's execution of the power of attorney for health care.
5. A statement that the principal and remote witnesses were all known to each other and the supervising attorney or a description of the form of photo identifica-

tion used to confirm the identity of the principal and each remote witness.

6. Confirmation that the principal declared that the principal is 18 years of age or older, that the document is the principal's power of attorney for health care, and that the document was being executed as the principal's voluntary act.

7. Confirmation that each of the remote witnesses and the supervising attorney were able to see the principal, or an individual 18 years of age or older at the express direction and in the physical presence of the principal, sign, and that the principal appeared to be 18 years of age or older and acting voluntarily.

8. A description of the audiovisual technology used for the signing process.

9. If the power of attorney for health care was not signed in counterpart, a description of the method used to forward the power of attorney for health care to each remote witness for signing and to the supervising attorney after signing.

10. If the power of attorney for health care was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document containing the power of attorney for health care, the signature of the principal, and the signatures of the remote witnesses.

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

12. Any other information that the supervising attorney considers to be material with respect to the principal's capacity to sign a valid power of attorney for health care, the principal's and witnesses' compliance with this section, or any other information that the supervising attorney deems relevant to the execution of the power of attorney for health care.

(L) The affidavit of compliance is attached to the power of attorney for health care.

(m) An affidavit of compliance described in this subsection shall be substantially in the following form:

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. § 155.10 (3) to document the execution of the power of attorney for health care of [name of principal] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the principal is

2. The name and [residential or business] address of remote witness 1 is

3. The name and [residential or business] address of remote witness 2 is

4. The address within the state of Wisconsin where the principal was physically located at the time the principal signed the power of attorney for health care is

5. The address within the state of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the principal's execution of the power of attorney for health care is

6. The address within the state of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the principal's execution of the power of attorney for health care is

7. The principal and remote witnesses were all known to each other and to the supervising attorney. – OR – The principal and remote witnesses were not all known to each other and to the supervising attorney. Each produced the following form of photo identification to confirm his or her identity:

....

8. The principal declared that the principal is 18 years of age or older, that the document is the principal's power of attorney for health care, and that the document was being executed as the principal's voluntary act.

9. Each of the remote witnesses and the supervising attorney were able to see the principal, or an individual 18 years of age or older at the express direction and in the physical presence of the principal, sign. The principal appeared to be 18 years of age or older and acting voluntarily.

10. The audiovisual technology used for the signing process was

11. The power of attorney for health care was not signed in counterpart. The following methods were used to forward the power of attorney for health care to each remote witness for signing and to the supervising attorney after signing. – OR – The power of attorney for health care 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 power of attorney for health care, the signature of the principal, and the signatures of the remote witnesses on [date] by [e.g., attaching page 7 from each counterpart signed by a remote witness to the back of the power of attorney for health care signed by the principal].

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

13. [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:]

SECTION 7. 244.05 of the statutes is repealed and recreated to read:

244.05 Execution of power of attorney. (1) To execute a power of attorney, the principal must sign the power of attorney, or an individual 18 years of age or older at the express direction and in the physical presence of the principal must sign the principal's name on the power of attorney.

(2) A signature of the principal, or the signature of an individual signing on behalf of the principal, on a power of attorney is presumed to be genuine if the principal makes an acknowledgment of the power of attorney before a notarial officer authorized under ch. 140 to take acknowledgments.

(3) A signature of the principal, or the signature of an individual signing on behalf of the principal, on a power of attorney is presumed to be genuine if the signing is witnessed by 2 witnesses via simultaneous remote appearance by 2-way, real-time audiovisual communication technology if all of the following conditions are satisfied:

(a) The signing is supervised by an attorney in good standing licensed by this state. The supervising attorney may serve as one of the remote witnesses.

(b) The principal attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(c) Each remote witness attests to being physically located in this state during the 2-way, real-time audiovisual communication.

(d) The principal and each of the remote witnesses identify themselves. If the principal and remote witnesses are not personally known to each other and to the supervising attorney, the principal and each of the remote witnesses display photo identification.

(e) The principal identifies anyone else present in the same physical location as the principal and, if possible, the principal makes a visual sweep of the principal's physical surroundings so that the supervising attorney and each remote witness can confirm the presence of any other person.

(f) The principal displays the power of attorney, confirms the total number of pages and the page number of the page on which the principal's signature will be affixed, and declares to the remote witnesses and the supervising attorney all of the following:

1. That the principal is 18 years of age or older.
2. That the document is the principal's power of attorney.
3. That the document is being executed as a voluntary act.

(g) The principal, or another individual 18 years of age or older at the express direction and in the physical presence of the principal, signs the power of attorney in

a manner that allows each of the remote witnesses and the supervising attorney to see the execution.

(h) The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the principal, a remote witness, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

(i) The power of attorney indicates that it is being executed pursuant to this section.

(j) One of the following occurs:

1. The principal, or another person at the direction of the principal, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney to the supervising attorney within a reasonable time after execution. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney to the remote witnesses within a reasonable time. The first remote witness to receive the original power of attorney signs the original power of attorney as a witness and forwards the entire signed original power of attorney by personal delivery or U.S. mail or commercial courier service within a reasonable time to the 2nd remote witness, who signs it as a witness and forwards the entire signed original power of attorney by personal delivery or U.S. mail or commercial courier service within a reasonable time to the supervising attorney.

2. The principal, or another person at the direction of the principal, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original power of attorney to the supervising attorney within a reasonable time after execution and transmits by facsimile or electronic means a legible copy of the entire signed power of attorney directly to each remote witness within a reasonable time after execution. Each remote witness then signs the transmitted copy of the power of attorney as a witness and personally delivers or transmits by U.S. mail or commercial courier service the entire signed copy of the power of attorney to the supervising attorney within a reasonable time after witnessing. The signed original and signed copies together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving the signed original and signed copies, compiles the signed original and signed copies into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the principal, in which case the compiled document shall constitute the original.

3. The principal and each of the remote witnesses sign identical copies of the original. The principal, or another person at the direction of the principal, and each of the remote witnesses personally deliver or transmit by

U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after execution. All of the signed originals together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the principal, in which case the compiled document shall constitute the original.

(k) The supervising attorney completes an affidavit of compliance that contains all of the following information:

1. The name and residential address of the principal.
2. The name and residential or business address of each remote witness.
3. The address within this state where the principal was physically located at the time the principal signed the power of attorney.
4. The address within this state where each remote witness was physically located at the time the remote witness witnessed the principal's execution of the power of attorney.
5. A statement that the principal and remote witnesses were all known to each other and the supervising attorney or a description of the form of photo identification used to confirm the identity of the principal and each remote witness.
6. Confirmation that the principal declared that the principal is 18 years of age or older, that the document is the principal's power of attorney, and that the document was being executed as the principal's voluntary act.
7. Confirmation that each of the remote witnesses and the supervising attorney were able to see the principal, or another individual 18 years of age or older at the express direction and in the physical presence of the principal, sign, and that the principal appeared to be 18 years of age or older and acting voluntarily.
8. A description of the audiovisual technology used for the signing process.
9. If the power of attorney was not signed in counterpart, a description of the method used to forward the power of attorney to each remote witness for signing and to the supervising attorney after signing.
10. If the power of attorney was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document containing the power of attorney, the signature of the principal, and the signatures of the remote witnesses.
11. The name, state bar number, and business or residential address of the supervising attorney.
12. Any other information that the supervising attorney considers to be material with respect to the principal's capacity to sign a valid power of attorney, the principal's

pal's and witnesses' compliance with this section, or any other information that the supervising attorney deems relevant to the execution of the power of attorney.

(L) The affidavit of compliance is attached to the power of attorney.

(m) An affidavit of compliance described in this subsection shall be substantially in the following form:

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. § 244.05 to document the execution of the power of attorney of [name of principal] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the principal is
2. The name and [residential or business] address of remote witness 1 is
3. The name and [residential or business] address of remote witness 2 is
4. The address within the state of Wisconsin where the principal was physically located at the time the principal signed the power of attorney is
5. The address within the state of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the principal's execution of the power of attorney is
6. The address within the state of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the principal's execution of the power of attorney is
7. The principal and remote witnesses were all known to each other and to the supervising attorney. – OR – The principal and remote witnesses were not all known to each other and to the supervising attorney. Each produced the following form of photo identification to confirm his or her identity:

....

8. The principal declared that the principal is 18 years of age or older, that the document is the principal's power of attorney, and that the document was being executed as the principal's voluntary act.
9. Each of the remote witnesses and the supervising attorney were able to see the principal, or another individual 18 years of age or older at the express direction and in the physical presence of the principal, sign. The principal appeared to be 18 years of age or older and acting voluntarily.
10. The audiovisual technology used for the signing process was
11. The power of attorney was not signed in counterpart. The following methods were used to forward the power of attorney to each remote witness for signing and

to the supervising attorney after signing. – OR – The power of attorney 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 power of attorney, the signature of the principal, and the signatures of the remote witnesses on [date] by [e.g., attaching page 7 from each counterpart signed by a remote witness to the back of the power of attorney signed by the principal].

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

13. [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:]

SECTION 8. 853.03 (2) (c) of the statutes is created to read:

853.03 (2) (c) For purposes this subsection, “conscious presence” includes the simultaneous remote appearance by 2–way, real–time audiovisual communication technology if all of the following conditions are satisfied:

1. The signing is supervised by an attorney in good standing licensed by this state. The supervising attorney may serve as one of the remote witnesses.

2. The testator attests to being physically located in this state during the 2–way, real–time audiovisual communication.

3. Each remote witness attests to being physically located in this state during the 2–way, real–time audiovisual communication.

4. The testator and each of the remote witnesses identify themselves. If the testator and remote witnesses are not personally known to each other and to the supervising attorney, the testator and each of the remote witnesses display photo identification.

5. The testator identifies anyone else present in the same physical location as the testator and, if possible, the testator makes a visual sweep of the testator’s physical surroundings so that the supervising attorney and each remote witness can confirm the presence of any other person.

6. The testator displays the will, confirms the total number of pages and the page number of the page on which the testator’s signature will be affixed, and declares to the remote witnesses and the supervising attorney all of the following:

- a. That the testator is 18 years of age or older.
- b. That the document is the testator’s will.

c. That the document is being executed as a free and voluntary act.

7. The testator, the testator with the assistance of another person 18 years of age or older with the testator’s consent, or another person 18 years of age or older signing in the testator’s name at the testator’s direction and in the testator’s physical presence, executes the will in a manner that allows each of the remote witnesses and the supervising attorney to see the execution.

8. The audiovisual communication technology used allows communication by which a person is able to see, hear, and communicate in an interactive way with another person in real time using electronic means, except that if the testator, a remote witness, or the supervising attorney has an impairment that affects hearing, sight, or speech, assistive technology or learned skills may be substituted for audio or visual if it allows that person to actively participate in the signing in real time.

9. The will indicates that it is being executed pursuant to this section.

10. One of the following occurs:

a. The testator, or another person at the direction of the testator, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original will to the supervising attorney within a reasonable time after execution. The supervising attorney then personally delivers or transmits by U.S. mail or commercial courier service the entire signed original will to the remote witnesses within a reasonable time. The first remote witness to receive the original will signs the original will as a witness and forwards the entire signed original will by personal delivery or U.S. mail or commercial courier service within a reasonable time to the 2nd remote witness, who signs it as a witness and forwards the entire signed original will by personal delivery or U.S. mail or commercial courier service within a reasonable time to the supervising attorney.

b. The testator, or another person at the direction of the testator, personally delivers or transmits by U.S. mail or commercial courier service the entire signed original will to the supervising attorney within a reasonable time after execution and transmits by facsimile or electronic means a legible copy of the entire signed original will directly to each remote witness within a reasonable time after execution. Each remote witness then signs the transmitted copy of the will as a witness and transmits the entire signed copy of the will by personal delivery or U.S. mail or commercial courier service to the supervising attorney within a reasonable time after witnessing. The signed original and signed copies together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving the signed original and signed copies, compiles the signed original and signed copies into one document by attaching the signature pages of each remote witness to the original signed

by or on behalf of the testator, in which case the compiled document shall constitute the original.

c. The testator and each of the remote witnesses sign identical copies of the original. The testator, or another person at the direction of the testator, and each of the remote witnesses personally deliver or transmit by U.S. mail or commercial courier service the signed originals to the supervising attorney within a reasonable time after execution. All of the signed originals together shall constitute one original document, unless the supervising attorney, within a reasonable time after receiving all signed originals, compiles the originals into one document by attaching the signature pages of each remote witness to the original signed by or on behalf of the testator, in which case the compiled document shall constitute the original.

11. The supervising attorney completes an affidavit of compliance that contains the following information:

- a. The name and residential address of the testator.
- b. The name and residential or business address of each remote witness.
- c. The address within this state where the testator was physically located at the time the testator signed the will.
- d. The address within this state where each remote witness was physically located at the time the remote witness witnessed the testator's execution of the will.
- e. A statement that the testator and remote witnesses were all known to each other and the supervising attorney or a description of the form of photo identification used to confirm the identity of the testator and each remote witness.
- f. Confirmation that the testator declared that the testator is 18 years of age or older, that the document is the testator's will, and that the document was being executed as the testator's free and voluntary act.
- g. Confirmation that each of the remote witnesses and the supervising attorney were able to see the testator, the testator with the assistance of another person 18 years of age or older with the testator's consent, or another person 18 years of age or older signing in the testator's name at the testator's direction and in the testator's physical presence, sign, and that the testator appeared to be 18 years of age or older and acting freely and voluntarily.
- h. A description of the audiovisual technology used for the signing process.
- i. If the will was not signed in counterpart, a description of the method used to forward the will to each remote witness for signing and to the supervising attorney after signing.
- j. If the will was signed in counterpart, a description of the method used to forward each counterpart to the supervising attorney and, if applicable, how and when the supervising attorney physically compiled the signed paper counterparts into a single document containing the will, the signature of the testator, and the signatures of the remote witnesses.

k. The name, state bar number, and business or residential address of the supervising attorney.

L. Any other information that the supervising attorney considers to be material with respect to the testator's capacity to sign a valid will, the testator's and witnesses' compliance with this section, or any other information that the supervising attorney deems relevant to the execution of the will.

12. The affidavit of compliance is attached to the will.

13. An affidavit of compliance executed in compliance with this section shall constitute a self-proving affidavit executed in compliance with s. 853.04 (2).

14. An affidavit of compliance described in this paragraph shall be substantially in the following form:

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. § 853.03 (2) (c) to document the execution of the will of [name of testator] via remote appearance by 2-way, real-time audiovisual communication technology on [date].

1. The name and residential address of the testator is
2. The name and [residential or business] address of remote witness 1 is
3. The name and [residential or business] address of remote witness 2 is
4. The address within the state of Wisconsin where the testator was physically located at the time the testator signed the will is
5. The address within the state of Wisconsin where remote witness 1 was physically located at the time the remote witness witnessed the testator's execution of the will is
6. The address within the state of Wisconsin where remote witness 2 was physically located at the time the remote witness witnessed the testator's execution of the will is

7. The testator and remote witnesses were all known to each other and to the supervising attorney. – OR – The testator and remote witnesses were not all known to each other and to the supervising attorney. Each produced the following form of photo identification to confirm his or her identity:

....

8. The testator declared that the testator is 18 years of age or older, that the document is the testator's will, and that the document was being executed as the testator's free and voluntary act.

9. Each of the remote witnesses and the supervising attorney were able to see the testator, the testator with the assistance of another person 18 years of age or older with

the testator's consent, or another person 18 years of age or older signing in the testator's name at the testator's direction and in the testator's physical presence, sign. The testator appeared to be 18 years of age or older and acting freely and voluntarily.

10. The audiovisual technology used for the signing process was

11. The will was not signed in counterpart. The following methods were used to forward the will to each remote witness for signing and to the supervising attorney after signing. – OR – The will 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

will, the signature of the testator, and the signatures of the remote witnesses on [date] by [e.g., attaching page 7 from each counterpart signed by a remote witness to the back of the will signed by the testator].

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

13. [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:]

E-Signature Technology and Remote Witnessing and Notarization Under Wis Stat. 140.174 and 140.145

Wisconsin Solo and Small Firm Conference



STATE BAR OF WISCONSIN

1

Brent Hoeft, Practice Management Advisor



(800) 957-4670



practicehelp@wisbar.org



[www.wisbar.org/practice
411](http://www.wisbar.org/practice411)



STATE BAR OF WISCONSIN

2

Uniform Electronic Transaction Act (UETA) 1999

US Electronic Signatures in Global and National
Commerce Act (ESIGN Act) 2000



Electronic Signatures

VS.

Digital Signatures





Remote Online Notarization (RON)

Fall 2024

Cheri Hipenbecker, General Counsel, cah@knightbarry.com

Knight Barry
TITLE GROUP

5

5

RON - advanced by the ULC



Uniform Law Commission
NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

111 N. Wabash Ave.
Suite 1010
Chicago, IL 60602
(312) 450-6600 tel
(312) 450-6601 fax
www.uniformlaws.org

[RULONA - Revised
Uniform Law on
Notarial Acts](#)

WHY YOUR STATE SHOULD ADOPT THE REVISED UNIFORM LAW ON NOTARIAL ACTS (2021)

The Revised Uniform Law responsibilities, in 2018 and 2020, officer either in the integrity and and clarify the stable infrastruc

Perhaps the most pervasive change since the adoption of the original version of ULONA has been the development and growing implementation of electronic records in commercial, governmental, and personal transactions. In 1999, NCCUSL approved the Uniform Electronic Transactions Act ("UETA"), thereby validating electronic records and putting them on a par with traditional records written on tangible media. The federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Ch. 96 (2010) ("ESign") was adopted in 2000, and it also recognized and put electronic records on a par with traditional records on tangible media. In 2004, NCCUSL approved the Uniform Real Property Electronic Recording Act ("URPERA"), thereby permitting county recorders and registrars to accept and register electronic real estate records. Each of those acts also recognized the validity of electronic notarial acts (UETA §11; ESign §101(g); URPERA §3(c)).

WI = Chapter
137 enacted
April 2004

WI = Section
706.25
enacted May
2006

Knight Barry
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6

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March 3, 2020 - Gov. Evers signs Wisconsin's remote notarization bill ([2019 Wisconsin Act 125](#))
- anticipated full implementation Sept 2020



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TITLE GROUP

7

7

March 3, 2020 - Gov. Evers signs Wisconsin's remote notarization bill ([2019 Wisconsin Act 125](#))
- anticipated full implementation Sept 2020



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8

8

THEN COVID

- Response March 18, 2020





State of Wisconsin
Department of Financial Institutions

Tony Evers, Governor

Kathy Blumenfeld, Secretary

FOR IMMEDIATE RELEASE:
March 18, 2020

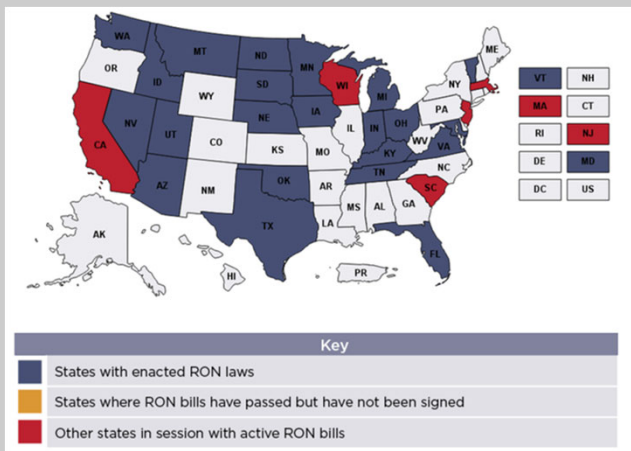
DFI Issues Emergency Guidance on Remote Notarization

MADISON, Wis. – At the direction of Governor Tony Evers, the [Wisconsin Department of Financial Institutions \(DFI\)](#) issued emergency guidance today pertaining to remote online notarization in Wisconsin.

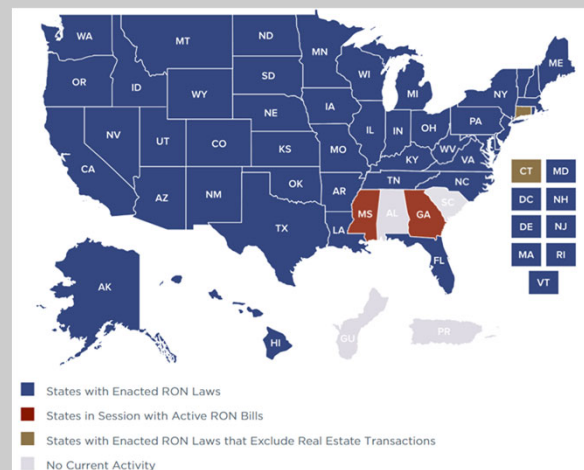
“Due to the [COVID-19](#) public health emergency, remote online notarization is now authorized in this state, subject to several safeguards to ensure the integrity of the notarial process,” said DFI Secretary Kathy Blumenfeld.

RON nationwide

Map - August 2019



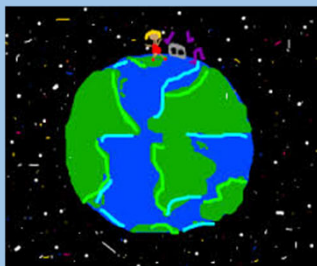
Map 5 years later - August 2024





RON - in (and On) Wisconsin

- The Wisconsin RON must be physically present in the State of Wisconsin when performing a notarial act, which includes a Remote Online notarial act. §140.10, Wis. Stats.
- When the RON is performed by a Wisconsin RON, then the RON session is deemed to have taken place in Wisconsin (even if the signer is in Illinois, Paris or on the moon). §140.45(1m), Wis. Stats.



SIGNER - can be anywhere

- The signer must “appear personally before the notarial officer”. §140.06, Wis. Stats.
- For Wisconsin law, this is satisfied if the signer (aka the “remotely located individual”) is “..using communication technology to appear before a notary public.” §140.45(2) Wis. Stats.
- Thus the signer can be in Illinois, Paris or on the moon
 - There are limitations on what document the Wisconsin RON can notarize if the signer is Outside the United States
 - Caveat - real estate title insurers may also have insurance limitations depending on where the property, notary and signer are located.



SIGNER - limitations if NOT in the good old USA (or its territories)

If the signer is NOT in the US then the document to be remotely notarized must:

- Relate to a matter before a public official or court, subject to the jurisdiction of the United States OR involve US property, AND
- The act of signing the document must not be prohibited by the foreign state in which the remotely located individual is located



IDENTITY PROOFING - in person

Before performing any notarial act, the Wisconsin notary must confirm the identity of the signer by one of these means:

- The notarial officer personally knows the signer
- Verification on oath or affirmation of a credible witness
- Signer presents a passport, vehicle operator's license, or government-issued identification card, which is current or expired not more than 3 years before performance of the notarial act.

§140.07, Wis. Stats.



IDENTITY PROOFING - remote

Before performing the notarial act for a remotely located individual, the Wisconsin RON must confirm the identity of the signer by one of these means:

- The notarial officer personally knows the signer
- Oath or affirmation of a credible witness; or
- Use of at least 2 **different types** of identity proofing

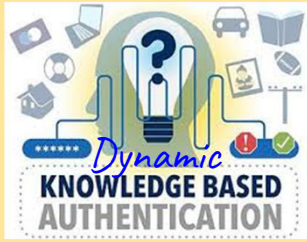
§140.145(3)(a), Wis. Stats.



REMOTE IDENTITY PROOFING #1

Signer presents a passport, vehicle operator's license, or other government- issued identification card *which is current*

- vs. in person which can be expired
- Real estate title insurers typically only permit US Citizens to sign via RON, but this may vary if the non-US Citizen has resided in the US a sufficient amount of time
- As of today, RON platforms can only verify US government issued IDs



REMOTE IDENTITY PROOFING #2

- Signer successfully answers a series of dynamic knowledge based authentication questions (Dynamic KBAs)
- Dynamic KBAs are questioned compiled from public and private data such as marketing data, credit reports or transaction history.
- Dynamic KBAs are generated in real time with the answers not available in a person's wallet (sometimes called "out of wallet" questions).

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Security Questions - Cheri Hipenbecker

Please answer the following questions: 01:26 minutes

1. Which of the following street addresses in Saint Paul have you ever lived at or been associated with?

☒ [Redacted]

☐ 2001 Margaret Street

☐ 2978 Northview Street

☐ 64 Finn Street South

☐ None of the above or I am not familiar with this property

I lived there in 1999

2. Based on your background, in what city is 25507 West Loomis Road?

☐ Franklin

☐ Janesville

☐ Porterfield

☒ [Redacted]

☐ I have never been associated with this address

rental property we own

3. What color is your 1996 Land Rover Discovery?

☐ Brown

☐ Dark Blue

☐ Dark Green

☐ Yellow

☒ [Redacted]

4. In which of the following states does 'Mary Hagen' currently live or own property?

☐ Maine

☐ North Carolina

☐ North Dakota

☒ [Redacted]

☐ None of the above or I am not familiar with this person

my mom

5. In which of the following cities does 'Jacquelyn Langenecker' currently live or own property?

☐ Orem, Utah

☒ [Redacted]

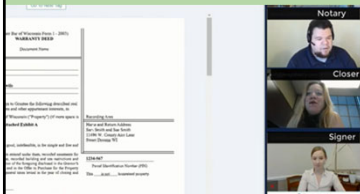
☐ Sandy, Utah

☐ West Haven, Utah

☐ None of the above or I am not familiar with this person

my sister

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IN THE RON SESSION - free will

The Wisconsin RON must:

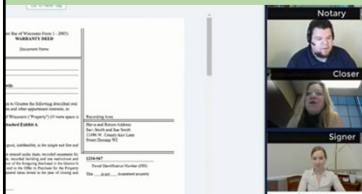
- Confirm that the signer and the WI RON are viewing and signing the same record/document. §140.145(3)(b)(3), Wis. Stats.
- Determine that the signer is competent or has the capacity to execute the record
 - e.g. discuss what kind of document is being signed and why - §140.08, Wis. Stats.
 - Confirm the signer's identity a 3rd time with the Drivers License
- Determine that the signer is signing voluntarily. §140.08, Wis. Stats.
- Witness the signer signing the record.

ACKNOWLEDGMENT
STATE OF WISCONSIN)
COUNTY)
Personally came before me on
the above-named
to me known to be the person(s) who executed the foregoing
instrument and acknowledged the same.
Notary Public, State of Wisconsin
My Commission (is permanent) expires:
Personally appeared? Or
appeared via use of
communication technology?



IN THE RON SESSION - certificate and stamp

- The notarial certificate for a RON must contain a statement substantially as follows: *"This notarial act involved the use of communication technology."*
- The notarial stamp will be an electronic image attached to or logically associated with an *electronic record*



RECORDING THE RON SESSION

- An audio-visual recording of the performance of the notarial act is required.
- The recording must be retained for at least 7 years

§140.145(3)(c), Wis. Stats.



TECHNOLOGY - companies

The WI Dept. of Financial Institutions and the Remote Notary Council must approve the technology company that a WI RON can use. Considerations include:

- Security of non-public personal information
- Ability to prove the signers identity
- Accessibility of the recording, both now and into the future
- Creation of electronic audit trail
- Technology to lock down the signed/notarized document and make it tamper evident

This isn't just Facetime. These are robust and secure platforms.



TECHNOLOGY - what the Signer needs

- A laptop or computer with camera, speakers and microphone capability.
- A smartphone for the identity proofing
 - SMS texting required - may be problematic if signer is outside of the US
- A strong internet connection
 - Run a "google speed test" - at the very minimum 5mbps upload/download
- A web browser such as Chrome, Internet Explorer or Firefox - Cheri's company prefers the latest version of Firefox



WHEN A WISCONSIN RON MUST SAY NO

If the record/document to be signed is any of the following, the Wisconsin RON must say NO:

- Will
- Codicils
- Testamentary trusts
- Living trust or trust amendments
- Powers of attorney (both financial and health care)**
- Marital property agreements
- Declarations to physicians (living wills)
- Authorizations for use and disclosure of protected health care information

§140.145(10), Wis. Stats.



HOWEVER...WHEN A WI RON MAY SAY YES

Execution of a Power of attorney for:

- A transaction, as defined in s. 137.11 (15) (which defines a "Transaction" as "an action or set of actions occurring between 2 or more persons relating to the conduct of business, commercial, or governmental affairs.")
- A limited financial power of attorney for a real estate transaction.

§140.145(10)(c), Wis. Stats. (as amended by 2023 Wisconsin Act 129 enacted March 21, 2024)



RON PLATFORMS - approved by the WI RON Council (Aug. 24)

[Amrock](#)

[Blend](#)

[Blue Notary](#)

[Cyberizeit.com](#)

[Digital Delivery](#)

[DocMagic](#)

[DocuSign](#)

[DocuVerify](#)

[eNotaryLog](#)

[Epic River Healthcare](#)

[Notarize Genie Inc.](#)

[Notary Hub by Everything Legal](#)

[NotaryCam](#)

[OneNotary.US](#)

[OneSpan](#)

[Online Notary Center](#)

[OnlineNotary.us](#)

[Pactima](#)

[PandaDoc](#)

[Pavaso](#)

[PoPi/o Mobile](#)

[Proof \(formerly Notarize\)](#)

[Qualia](#)

[Secured Signing](#)

[SIGNiX](#)

[Simplifile](#)

[Stavvy](#)

<https://apps.dfi.wi.gov/apps/NotaryTechProvider/TechProvider>



RON PLATFORMS - Things to consider

- Does the RON Platform provide the video technology OR does the notary choose Zoom, WebEx, etc...?
- Does the RON Platform provide the identity proofing?
- Does the RON Platform retain the video for 7 years?
- Does the RON Platform create a tamper evident document?
- Cost, ease of use and consumer experience?
- Privacy - what happens to the non-public personal information?
- For Lenders - integrations with loan origination systems and eVault for the Promissory note?
- For real estate title agents - underwriter approval?



PAPERING OUT - record a paper version of an electronic record

Notary Public Certification

I am a notary public in the State of Wisconsin and am making this certification pursuant to Section 140.20(3), Wis. Stats. to permit a Wisconsin Register of Deeds to accept for recording a tangible copy of the following Warranty Deed ("Deed") which the Grantor(s) signed electronically appearing before me either physically in my presence or in my presence involving the use of communication technology:

Grantor(s): _____

Grantee(s): _____

Property Address: _____

Date Signed
Electronically: _____

I hereby certify that the attached tangible copy of the Deed is an accurate copy of the electronic record.

Biometrics - what the Future may hold



- §140.145(3)(a)(3) - requires at least 2 different types of *identity proofing*.
- Remote Notary Council (“Council”) and WI Dept of Financial Institutions (“Department”) tasked with developing standards for identify proofing
- Council and Department adopted the Mortgage Industry Standards Maintenance Organization (MISMO) standards for identity proofing
- EXCEPT for Biometrics stating: *MISMO standards anticipate, but do not give direct guidance on, technologies that would enable identity proofing by biometric means (such as face, voice, or fingerprint recognition). While the Council and the Department will continue to monitor technological developments in this emerging field, at this time they believe additional experience, evidence, and safeguards are needed before they can authorize the use of biometrics as a means of identity proofing.*

eClosings- are here!!!



Hybrid

- Face to face (same room)
- Title company closer/ notary
- ***Documents are somewhat digitized, some electronic signatures and some wet ink.***











Full in person- IPEN (in-person electronic notarization)

- Face to face (same room)
- Title company closer/eNotary
- ***All docs are digitized, eSigned and eNotarized on a computer/tablet & eRecorded.***

Full remote - RON (remote electronic notarization)







- Via secure web portal/RON platform (more info below)
- Title company closer/eNotary
- ***All docss are digitized, eSigned, eNotarized via the RON platform & eRecorded.***
- Section 140.145, Wis. Stats.

Path to full DIGITAL closings in Resi Mortgage Lending World

Settlement Agent	 eSignature – Pre-Close Technology and process allowing electronic signatures to be applied on documents prior to the date the mortgage transaction is settled	 eSignature – Settlement Table Technology and process allowing electronic signatures to be applied on documents at the mortgage settlement table	 Remote Online Notary (RON) Technology and process allowing a notary to conduct notarizations over the internet via live audio video call	 In Person Electronic Notary (IPEN) Technology and process allowing a notary to conduct notarizations electronically where the parties are physically present	 eRecording Technology and process allowing the recording of the security instrument electronically with the County
Mortgage Originator	 eSignature – Pre-Close Technology and process allowing electronic signatures to be applied on documents prior to the date the mortgage transaction is settled	 eSignature – Settlement Table <i>(including RON where applicable)</i> Technology and process allowing electronic signatures to be applied on documents at the mortgage settlement table	 eNote Technology that supports ESIGN UETA, and UCC requirements for the creation and execution of an electronic promissory note	 eVault Technology that supports ESIGN, UETA and UCC requirements for the storage, management and transfer of electronic promissory notes	 MERS eRegistry The System of Record to identify the current Controller & Location of the Authoritative Copy of an eNote as required by UCC

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Path to full DIGITAL closings in Resi Mortgage Lending World

	 Settlement Agents	 Country Recorder	 Lenders	 Warehouse Lenders	 Investors	 Custodian	 Servicers
eSignature - Pre-Close	X		X				
eSignature - Closing Table	X		X				
RON	X		[X]				
IPEN	X						
eRecording	X	X					
eNote			X	X	X	X	X
eVault			X	X	X	X	X
MERS eRegistry			X	X	X	X	X

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For more information
visit the WI Dept of
Financial Institutions
website on RON:

<https://dfi.wi.gov/Pages/ConsumerServices/NotaryPublic/RemoteOnlineNotary.aspx>

REMOTE WITNESSING AND NOTARIZATION OF ESTATE PLANNING DOCUMENTS IN WISCONSIN

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cpriebe@certuslegalgroup.com
www.certuslegalgroup.com

