

Rules Relating to Notaries Public

§1 Purpose and authority

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§1 Purpose and authority. These rules are adopted pursuant to sections 127A-12, 13, 25, 29, and 31, Hawaii Revised Statutes, to respond to the COVID-19 emergency declared by the Governor, specifically to enable Hawaii notaries to perform notarial acts while complying with social distancing guidelines. These rules have the force and effect of law.

§2 Social distancing. (a) The notary public shall take every reasonable precaution to perform notarial acts in compliance with all orders and social distancing guidelines relating to the COVID-19 emergency.

(b) Notaries public will not be required to perform notarial acts if they believe social distancing guidelines to ensure health and safety cannot be followed.

(c) Nothing in these rules shall be construed to require the notary public to perform notarial acts utilizing audio-visual technology.

§3 Notarial acts utilizing audio-visual technology. Notarial acts may be performed by utilizing audio-visual technology, provided there is compliance with the following conditions:

- (1) The notary public shall have personal knowledge of the signer or obtain satisfactory evidence of the identity of the signer by requiring presentation of a current government-issued identification card or document that contains the signer's photograph and signature to the notary public during the video conference. Transmittal of the signer's identification for purposes of verification to the notary public prior to or after the video conference shall not satisfy this condition;

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- (2) The notary public shall confirm via observation during the video conference that the signer appears to be aware of significance of the transaction requiring a notarial act and is willing to perform such a transaction[†]. Before any documents are signed, the notary public must be able to view by camera the entire space in which the signer is located;
- (3) The video conferencing shall allow for direct interaction between the [~~person~~] signer and the notary public and shall not be pre-recorded;
- (4) The signer shall attest to being physically located in this State and affirmatively state the name of the county in which the signer is located, and [‡]the notary public shall confirm as is reasonably possible that the signer is physically situated in this State;
- (5) The notary public shall create an audio-visual recording of the performance of the notarial act, including the act of witnessing the will (or codicil, as the case may be), if applicable, which shall be kept as part of the notary public's record and stored as an unsecured audio-visual recording or on a secured external digital storage such as a flash drive, DVD, or external hard drive;
- (6) The notary public shall deposit with the office of the attorney general the external digital storage and the notarial record books within ninety (90) days of the notary public's date of the resignation, expiration of any term of office as a notary public, or removal from or abandonment of office as a notary public. The notary public's representative shall provide the same upon the notary public's death;
- (7) The notary public shall obtain a legible copy of the unsigned document to be notarized, which may be transmitted to the notary public via facsimile or electronic means, prior to or on the same date of the execution;
- (8) Any persons who are present during the transaction shall state their names, and the signer shall affirmatively state what document the signer is signing;

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- (9) During the video conference, the signer shall then sign the document while in clear view of the notary public;
- ~~[(7)]~~ (10) The notary public shall obtain the signed document that requires notarization within fourteen (14) days of the signer signing, and the notarization date shall be the same as the date of signature;
- ~~[(8)]~~ (11) The notary public may notarize the transmitted copy of the document and transmit the same back to the signer;
- ~~[(9)]~~ (12) The notary public shall add a statement to the notarized document as follows: "*This notarial act involved the use of communication technology enabled by emergency order*";
- ~~[(10)]~~ (13) The notary public shall enter in the record book in place of the signature that the notarial act was performed pursuant to Executive Order 20-02; and
- ~~[(11)]~~ (14) The notary public may repeat notarization of the original signed document as of the date of execution provided the notary public receives such original signed document together with the electronically notarized copy within sixty (60) days after the date of execution.

§4. Remote witnessing of will (or codicil as the case may be) containing self-proving affidavit. The act of witnessing wills (or codicils as the case may be) may be performed before a notary public utilizing audio-visual technology, provided the wills (or the codicils as the case maybe) contain self-proving language pursuant to section 560:2-504(a), Hawaii Revised Statutes, or any self-proving affidavit, and there is compliance with the requirements of section 3 of the Rules herein as well as the following requirements:

- (1) The witness(es) shall have personal knowledge of the testator or obtain satisfactory evidence of the identity of the testator by requiring presentation of a current government-issued identification card or document that contains the testator's photograph and signature to the witness(es) during the video conference. Transmittal of the testator's

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- identification for purposes of verification to the witness(es) prior to or after the video conference shall not satisfy this condition;
- (2) The notary public shall create a continuous live audio-visual recording of the performance of witnessing and notarial acts, which shall be kept as part of the notary public's record and stored as an unsecured audio-visual recording or on a secured external digital storage such as a flash drive, DVD, or external hard drive;
- (3) The video conferencing shall allow for direct interaction between the testator, witnesses and the notary public, and shall not be prerecorded. Before any documents are signed, the witnesses must be able to view by camera the entire space in which the testator is located;
- (4) During the video conference, the testator shall declare the testator's name and that the testator is signing and executing the testator's will (or codicil, as the case may be), and is:
- (A) Doing so willingly and voluntarily, and as the testator's free and voluntary act for the purposes therein expressed; and
- (B) Eighteen (18) years of age or older, of sound mind, and under no constraint or undue influence;
- (5) The witnesses shall each state their names and confirm during the video conference that they are aware of the significance of their role as witnesses to the execution of the testator's will (or codicil, as the case may be) and are willing to serve and perform as witnesses;
- (6) During the video conference, the testator shall then sign the will (or codicil, as the case may be), which contains self-proving language pursuant to section 560:2-504(a), Hawaii Revised Statutes, or any self-proving affidavit;
- (7) Each witness shall obtain a legible copy of the signature page(s) of the will (or codicil, as the case may be), which may be transmitted to each witness via facsimile or electronic means, prior to

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or on the same date that the page(s) are signed by each witness. This provision shall not be construed to affect the requirement for the public notary to obtain all the pages of the document the public notary is notarizing;

- (8) Each witness shall sign the copy of the signature page(s) of the will (or codicil, as the case may be) during the video conference, and send the signed page(s) to the notary public in accordance to the requirements of section 3 herein;
- (9) The will (or codicil, as the case may be) that is witnessed remotely in accordance with the emergency rules shall contain a statement as follows: "*The witnessing of this will (or codicil) involved the use of communication technology enabled by emergency order*"; and
- (10) Each witness may repeat the witnessing of the will (or codicil, as the case may be) as of the date of execution provided the witness receives such original signature page(s) together with the electronically witnessed copies within sixty (60) days after the date of execution.