

2021 -- H 6254

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

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A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- STANDARDS OF CONDUCT
FOR NOTARIES PUBLIC

Introduced By: Representatives Casimiro, Vella-Wilkinson, and Noret

Date Introduced: April 16, 2021

Referred To: House State Government & Elections

(Secretary of State)

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 30.2

4 STANDARDS OF CONDUCT FOR NOTARIES PUBLIC

5 **42-30.2-1. Applicability.**

6 (a) All notaries public should adhere to this chapter for the standards of conduct for notaries
7 public in the state of Rhode Island. These standards of conduct will be considered by the governor
8 in the appointment, reappointment and removal of notaries public from their commissions.

9 (b) Nothing in this chapter shall supersede the provisions of any court rule, including court
10 forms; any other provisions of the general laws, including, but not limited, to chapter 30.1 of title
11 42 (the "uniform law on notarial act"); any federal statute; or any regulation adopted pursuant to
12 the general laws or federal statute.

13 (c) Section 42-30.2-8 shall be applicable as of the effective date of this chapter until the
14 termination of the state of emergency due to COVID-19 as declared by the governor pursuant to
15 executive order 20-02. The requirement of personal knowledge of the identity pursuant to the
16 provisions of § 42-30.2-10 shall be suspended while § 42-30.2-8 is in effect.

17 **42-30.2-2. Definitions.**

18 As used in this chapter:

1 (1) “Affirmation” means a notarial act, or part thereof, that is legally equivalent to an oath
2 in which an individual, at a single time and place:
3 (i) Appears in person before the notary public;
4 (ii) Is personally known to the notary public or is identified by the notary through
5 satisfactory evidence of the identity; and
6 (iii) Makes a vow of truthfulness or fidelity under the pains and penalties of perjury based
7 on personal honor and without invoking a deity or using any form of the word "swear".
8 (2) “Commission” means both to empower to perform notarial acts and the written
9 evidence of authority to perform those acts.
10 (3) “Copy certification” means a notarial act in which a notary public:
11 (i) Is presented with a document that is neither a vital record, a public record nor publicly
12 recordable; and
13 (ii) Copies or supervises the copying of the document using a photographic or electronic
14 copying process; or
15 (iii) Compares the document to the copy; and
16 (iv) Determines that the copy is accurate and complete; and
17 (v) Applies an acknowledgment to the document owner's signature attesting to the above
18 listed facts.
19 (4) “Credible witness” means an honest, reliable, and impartial person who personally
20 knows an individual appearing before a notary public and takes an oath or affirmation from the
21 notary to vouch for that individual's identity.
22 (5) “Journal of notarial acts” or “journal” means a permanently bound book that creates
23 and preserves a chronological record of notarizations performed by a notary public.
24 (6) “Jurat” means a notarial act in which an individual, at a single time and place:
25 (i) Appears in person before the notary public and presents a document;
26 (ii) Is personally known to the notary public or is identified by the notary through
27 satisfactory evidence of the identity;
28 (iii) Signs the document in the presence of the notary public; and
29 (iv) Takes an oath or affirmation before the notary public vouching for the truthfulness or
30 accuracy of the signed document.
31 (7) “Notarization” has the same meaning ascribed to “notarial act” in § 42-30.1-2.
32 (8) “Notarial certificate” and “certificate” mean the part of, or an attachment to, a notarized
33 document that is completed by the notary public, bears the notary's signature and seal and states
34 the facts attested by the notary in a particular notarization.

1 (9) “Oath” means a notarial act, or part thereof, which is legally equivalent to an
2 affirmation, and in which an individual, at a single time and place:

3 (i) Appears in person before the notary public;

4 (ii) Is personally known to the notary public or is identified by the notary through
5 satisfactory evidence of the identity; and

6 (iii) Makes a vow of truthfulness or fidelity under the pains and penalties of perjury by
7 invoking a deity or using any form of the word "swear".

8 (10) “Personal appearance”, “in person” or “appear personally” means that the principal
9 and the notary public are physically close enough to see, hear, communicate with and hand
10 identification documents to each other.

11 (11) “Personal knowledge of the identity” as used in the uniform law on notarial acts means
12 familiarity with an individual resulting from interactions with that individual over a period of time
13 sufficient to dispel any reasonable uncertainty that the individual has the identity claimed.

14 (12) “Principal” means a person whose signature is notarized, or a person other than a
15 credible witness, taking an oath or affirmation from the notary public.

16 (13) “Regular place of work or business” means a stationary office or workspace where
17 one spends most of one's working or business hours.

18 (14) “Satisfactory evidence of the identity” has the meaning ascribed to it in § 42-30.1-
19 6(b).

20 (15) “Signature witnessing” means a notarial act in which an individual, at a single time
21 and place:

22 (i) Appears in person before the notary public and presents a document;

23 (ii) Is personally known to the notary public or is identified by the notary through
24 satisfactory evidence of the identity; and

25 (iii) Signs the document in the presence of the notary public.

26 **42-30.2-3. Scope and description of duties.**

27 (a) A notary public may perform the following notarial acts: acknowledgments, oaths and
28 affirmations, jurats, signature witness, copy certifications, issuance of subpoenas and deposition of
29 witnesses.

30 (b) In completing a notarial act, a notary public should sign his or her name exactly as it
31 appears on the notary's commission, write the title "Notary Public" after his or her signature, list
32 his or her commission expiration date and list his or her notary identification number. Applicants
33 must use their full first and last name (full middle name or middle initial is optional) or first initial,
34 full middle and last name on the application. Neither initials alone nor a nickname will be accepted.

1 Whatever form the applicant's name is used on the application must be consistently used
2 throughout the duration of the applicant's notary commission when performing notarial acts, e.g.,
3 a notary commissioned as John R. Doe may not perform notarial acts as John Roe Doe or J. Roe
4 Doe.

5 (c) A notary public may charge a fee not to exceed five dollars (\$5.00) per
6 document/notarization; travel fees must be equal to or less than the then effective federal mileage
7 rate as issued by the Internal Revenue Service. All fees must be posted in a conspicuous place in
8 the notary's place of business or upon request, fees must be disclosed to any person utilizing the
9 services of the notary.

10 (d) A notary public has neither the duty nor the authority to investigate, ascertain or attest
11 to the lawfulness, propriety, accuracy or truthfulness of a document or transaction involving a
12 notarial act.

13 (e) The general laws require the use of a notary stamp when notarizing documents. The
14 stamp shall be in round (circular) or rectangular form with an edge border surrounding the required
15 elements of the stamp. The stamp must include the notary's name exactly as it appears on his or
16 her commission and the words "NOTARY PUBLIC" and "RHODE ISLAND". The stamp may
17 also include the notary's identification number and commission expiration date. A notary's stamp
18 is the exclusive property of the notary; it may not be used by any other person. This section shall
19 not preclude a notary who is a member of the general assembly in the state of Rhode Island from
20 notarizing a document without the use of the stamp on the floor of the general assembly during
21 open session.

22 (f) Each notary public should develop and adhere to his or her own "standard operating
23 procedure" when notarizing instruments. This will benefit the notary if he or she is ever required
24 to testify as how a particular instrument was notarized. A notary may find the use of a journal of
25 notarial acts to be a beneficial tool. Notaries electing to use a journal of notarial acts should as a
26 matter of good practice record the following:

- 27 (1) The date and time of the notarial act;
- 28 (2) The type and description of the notarial act and document notarized;
- 29 (3) The signature, printed name and address of each principal and witness;
- 30 (4) Description of the satisfactory evidence of the identity of each person;
- 31 (5) The fee, if any, charged for the notarial act; and
- 32 (6) The circumstances for not completing a notarial act.

33 A notary public should not record a Social Security or credit card number in the journal.

34 The keeping of a journal is recommended as best practice but not required. These standards

1 of conduct shall not be construed to impair or infringe in any way on the attorney-client privilege
2 or the attorney work product doctrine.

3 (g) Certificates for notarial acts:

4 (1) A notary public should take the acknowledgment of the signature or mark of persons
5 acknowledging for themselves or in any representative capacity by using substantially the
6 following form:

7 State of _____

8 County of _____

9 On this _____ day of _____, 20____, before me, the undersigned notary public,
10 personally appeared (name of document signer), and provided to me, through satisfactory evidence
11 of the identification, which was _____ to be the person whose name is signed
12 on the preceding or attached document, and acknowledged that s/he signed the document
13 voluntarily for its stated purpose.

14 _____

15 Notary Public

16 [Typed or Printed Notary Public Name]

17 [Notary ID Number]

18 My commission expires: _____

19 (2) A notary public should use a jurat certificate in substantially the following form in
20 notarizing a signature or mark on an affidavit or other sworn or affirmed written declaration:

21 State of _____

22 County of _____

23 Subscribed to and sworn to (or affirmed) before me on this _____ day of _____,
24 20____, by (name of document signer), who proved to me through satisfactory evidence of the
25 identification to be the person who appeared before me.

26 Notary Public

27 [Typed or Printed Notary Public Name]

28 [Notary ID Number]

29 My commission expires: _____

30 (3) A notary public should witness a signature in substantially the following form in
31 notarizing a signature or mark to confirm that it was affixed in the notary's presence without
32 administration of an oath or affirmation:

33 State of _____

34 County of _____

1 On this _____ day of _____, 20____, before me, the undersigned notary public,
2 personally appeared (name of document signer), and proved through satisfactory evidence of
3 identification, to be the person whose name is signed on document in my presence.

4 _____

5 Notary Public
6 [Typed or Printed Notary Public Name]
7 [Notary ID Number]
8 My Commission expires: _____

9 (4) A notary public should certify a copy by using substantially the following form:

10 State of _____

11 County of _____

12 On this _____ day of _____, 20____, I certify that the document is a true, exact, complete,
13 and unaltered copy made by me of _____ (description of the document),
14 presented to me by _____, and to the best of my knowledge the copied
15 document is neither a vital record nor a publicly recordable document that may be available as a
16 certified copy from an official source other than a notary public.

17 _____

18 Notary Public
19 [Typed or Printed Notary Public Name]
20 [Notary ID Number]
21 My Commission expires: _____

22 (h) A notary public may certify the affixation of a signature by mark on a document
23 presented for notarization if:

24 (1) The principal affixes the mark in the presence of the notary public and of two (2)
25 witnesses unaffected by the document;

26 (2) Both witnesses sign their own names beside the mark;

27 (3) The notary public writes below the mark: "Mark affixed by (name of signer by mark)
28 in the presence of (names and addresses of witnesses) and undersigned notary; and

29 (4) The notary public notarizes the signature by mark through an acknowledgment, jurat or
30 signature witnessing.

31 (i) The notary public may sign the name of a principal who is physically unable to sign or
32 make a mark on a document presented for notarization if:

33 (1) The principal directs the notary public to do so in the presence of two (2) witnesses
34 who are unaffected by the document;

1 (2) The principal does not have a demeanor that causes the notary public to have a
2 compelling doubt about whether the principal knows the consequences of the transaction requiring
3 the notarial act;

4 (3) In the notary public's judgment, the principal is acting of his or her own free will;

5 (4) The notary public signs the principal's name in the presence of the principal and the
6 witnesses;

7 (5) Both witnesses sign their own names beside the signature;

8 (6) The notary public writes below the signature: "Signature affixed by notary public in the
9 presence of (names and addresses of principal and two (2) witnesses);" and

10 (7) The notary public notarizes the signature through an acknowledgment, jurat or signature
11 witnessing.

12 (j) This section does not require a notary public to use the forms set forth above if the form
13 of acknowledgment, jurat, signature witnessing or copy certification of a document contains an
14 alternative form from another state if the document is to be filed or recorded in, or governed by the
15 laws of that other state.

16 (k) This section does not require a notary public to use the forms set forth above if the form
17 of acknowledgment, jurat, signature witnessing or copy certification appears on a printed form that
18 contains an express prohibition against altering that form.

19 (l) The forms of certificates for notarial acts set forth in this section are not intended to
20 replace or supersede the existing forms commonly used in conveyances of real estate or in other
21 legal documents within the State of Rhode Island, and in particular, those forms of certificates for
22 notarial acts approved by any committee of the Rhode Island Bar Association.

23 (m) Requirements for electronic notarizations:

24 (1) A notary public may perform electronic notarizations with software approved by the
25 Rhode Island department of state pursuant to § 42-30.1-14. The notary must register and provide a
26 sample of the notary's signature and official electronic stamp in addition to the eNotary capability
27 they intend to use with the Rhode Island department of state before performing any notary act.

28 (2) All requirements and elements of paper-based notarization apply to electronic
29 notarizations.

30 (3) The liability, sanctions, and remedies for the improper performance of electronic
31 notarial acts are the same as described and provided by law for the improper performance of non-
32 electronic notarial acts.

33 **42-30.2-4. Prohibited acts.**

34 (a) A notary public should not perform a notarial act if:

1 (1) The document presented for a certification is a vital record, a public record or a publicly
2 recorded document that is available as a certified copy from an official source other than a notary
3 public;

4 (2) The notary public is a party to or is named in the document that is to be notarized,
5 except that a notary may notarize a document if the notary is named in the document for the sole
6 purpose of receiving notices relating to the document and except that a notary who is licensed as
7 an attorney in the state of Rhode Island and is named as an executor, trustee or in any fiduciary
8 capacity in a document, or employees of such attorney, may perform notarial acts concerning such
9 document;

10 (3) The notary public will receive as a direct result of the notarial act any commission, fee,
11 advantage, right, title, interest, cash, property or other consideration exceeding in value the fees set
12 forth in these standards of conduct or has any financial interest in the subject matter of the
13 document. This section shall not preclude a notary who is licensed as an attorney in the state of
14 Rhode Island or any employee of such attorney where the attorney receives a legal fee for
15 professional legal services rendered in connection with such document; the notary public is a
16 spouse, domestic partner, parent, guardian, child or sibling of the principal, including in-law, step,
17 or half relatives, except where such persons witness a will or other legal document prepared by the
18 notary who is an attorney licensed in the state of Rhode Island.

19 (b) A notary public should not refuse to perform a notarial act solely based on the
20 principal's race, advanced age, gender, sexual orientation, religion, national origin, health or
21 disability.

22 (c) A notary public should not influence a person either to enter into or avoid a transaction
23 involving a notarial act by the notary, except that the notary may provide advice relating to that
24 transaction if the notary is duly qualified, trained or experienced in a particular industry or
25 professional field.

26 (d) A notary public should not execute a certificate containing information known or
27 believed by the notary to be false.

28 (e) A notary public should not affix an official signature or stamp on a notarial certificate
29 that is incomplete.

30 (f) A notary public should not provide or send a signed or stamped notarial certificate to
31 another person with the understanding that it will be completed or attached to a document outside
32 of the notary's presence.

33 (1) In connection with a commercial, non-consumer transaction, a notary public may
34 deliver a signed, stamped or signed and stamped notarial certificate to an attorney with the

1 understanding that:

2 (i) The attorney will attach the certificate to a document outside of the notary's presence;

3 and

4 (ii) The attorney will hold such notarial certificate in escrow; and

5 (iii) The attorney informs the notary that the attorney will obtain the approval of the
6 principal, or principals, involved before attaching the certificate to the document.

7 (g) A notary public should not notarize a signature on a blank or incomplete document,
8 except in connection with a commercial, non-consumer transaction, a notary may deliver a signed,
9 stamped, or signed and stamped notarial certificate to an attorney with the understanding that:

10 (1) The attorney will attach the certificate to a document outside of the notary's presence;

11 and

12 (2) The attorney will hold such notarial certificate in escrow; and

13 (3) The attorney informs the notary that the attorney will obtain the approval of the
14 principal or principals involved before attaching the certificate to the document.

15 (h) A notary public should not perform any official act with the intent to deceive or defraud.

16 (i) A notary public should not influence a person either to enter into or avoid a transaction
17 involving a notarial act by the notary, except that the notary may advise against a transaction if the
18 notary knows or has good reason to believe that the associated transaction is unlawful.

19 **42-30.2-5. Change of name or address and loss of stamp.**

20 Within ten (10) days after the change of a notary public's residence or name, the notary
21 should file with the Rhode Island department of state, notary public section, a change of address or
22 change of name form. The required forms can be obtained from the Notary Public Section, 148
23 West River Street, Providence, RI 02904 or www.sos.ri.gov. Any notary public whose stamp is
24 lost, misplaced, destroyed, broken, damaged, stolen or otherwise unworkable should immediately
25 deliver written notice of that fact to the Rhode Island department of state. If and when the notary's
26 stamp is recovered or replaced, written notice of the recovery or replacement should also be
27 delivered immediately to the Rhode Island Department of State, Notary Division, 148 West River
28 Street, Providence, RI 02904.

29 **42-30.2-6. Notification of resignation or death.**

30 (a) A notary public who ceases to meet the statutory qualifications or who becomes
31 permanently unable to perform his or her notarial duties, should resign his or her commission.

32 (b) A notary public who resigns his or her commission should send to the Rhode Island
33 department of state by any means that provides a tangible receipt or acknowledgment, including
34 certified mail and electronic transmission, a signed notice indicating the effective date of the

1 resignation.

2 (c) If a notary public dies during the term of his or her commission, the notary's personal
3 representative, as soon as reasonably practicable after death, should notify the Rhode Island
4 department of state of the death in writing by any means that provides a tangible receipt or
5 acknowledgment, including certified mail and electronic transmission. The notary's personal
6 representative should also comply with the provisions of § 42-30.2-7.

7 **42-30.2-7. Duties at the end of the commission.**

8 When a notary public commission expires, is resigned, or is revoked, the notary should:

9 (1) As soon as reasonably practicable, destroy or deface all notary stamps so that they may
10 not be used: and

11 (2) If the notary public elected to use a "journal of notarial acts" as a matter of good
12 practice, the notary should retain the journal and records for seven (7) years after the date of
13 expiration, resignation or revocation.

14 **42-30.2-8. Authority to perform secure remote online notarization.**

15 (a) Supplemental definitions

16 (1) "Identity proofing" means a process or service by which a third party provides a notary
17 public with a means to verify the identity of a remotely located individual by a review of personal
18 information from public or private data sources

19 (2) "Personal appearance", "in person" or "appear personally" means that the principal and
20 the notary public can communicate simultaneously by sight and sound through an electronic device
21 or process at the time of the notarization; or that the principal and notary public are physically close
22 enough to see, hear, communicate with each other at the time of notarization.

23 (3) "Remotely located individual" means an individual who is not in the physical presence
24 of the notary public.

25 (b) In order to provide Rhode Island citizens and businesses with a secure and safe method
26 by which to execute important legal documents, and to promote and secure the safety and protection
27 of the people of Rhode Island, a notary public commissioned under Rhode Island laws may perform
28 a notarization for a remotely located individual not in the physical presence of the notary if:

29 (1) The remotely located individual and the notary public can communicate simultaneously
30 by sight and sound through an electronic device or process at the time of the notarization; and

31 (2) The notary public:

32 (i) Has reasonably identified the remotely located individual by one or more of the
33 following:

34 (A) Has obtained satisfactory evidence of identity of the remotely located individual by

1 using at least two (2) different types of identity proofing; or
2 (B) By oath or affirmation from a credible witness who:
3 (I) Is in the physical presence of either the notary public or the remotely located individual;
4 or
5 (II) Is able to communicate with the notary public and the remotely located individual
6 simultaneously by sight and sound through an electronic device or process at the time of the
7 notarization, if the credible witness has personal knowledge of the remotely located individual and
8 has been identified by the notary public under subsection (b)(2)(i)(A) or subsection (b)(2)(i)(C) of
9 this section; or
10 (C) The notary public has personal knowledge under § 42-30.1-6(a) of the identity of the
11 remotely located individual; and
12 (3) Either directly or through an agent:
13 (i) Creates an audio and visual recording of the performance of the notarization; and
14 (ii) Shall retain the audio-visual recording or cause the recording to be retained by a
15 repository designated by or on behalf of the notary public. Unless Rhode Island law requires a
16 different period of retention, the recording must be retained for a period of at least ten (10) years
17 after the recording is made; and
18 (4) For an individual physically located outside the geographic boundaries of the state of
19 Rhode Island:
20 (i) The record is intended for filing with or relates to a matter before a court, governmental
21 entity, public official, or other entity subject to the jurisdiction of the United States; or involves
22 property located in the territorial jurisdiction of the United States or a transaction substantially
23 connected to the United States; and
24 (ii) The notary public has no actual knowledge that the act of making the statement or
25 signing the record is prohibited by the laws of the jurisdiction in which the remotely located
26 individual is physically located.
27 (c) Nothing in these standards of conduct shall require a notary public commissioned under
28 the laws of the state of Rhode Island to perform a notarization:
29 (1) With respect to an electronic record;
30 (2) For an individual not in the physical presence of the notary public; or
31 (3) Using a technology that the notary public has not selected.
32 (d) Once signed, the requesting person shall mail the signed copy of the documents to the
33 notary public for certification and execution with the notary's signature and the official stamp.
34 (e) The official date and time of the notarization shall be the date and time when the notary

1 [public witnesses the signature via the electronic devices that provide the audio/video presence.](#)

2 [\(f\) Prior to commencing remote online notarization, a duly commissioned Rhode Island](#)
3 [notary public must register with the commissioning agency. The notary must register the capability](#)
4 [to notarize remotely before performing any remote online notarial act. When registering, the notary](#)
5 [must provide the name of the approved solution provider, an exemplar of the notary’s electronic](#)
6 [signature and official electronic stamp.](#)

7 **42-30.2-9. Notarization of affidavit of subscribing witnesses to any purported will or**
8 **codicil.**

9 [For the purposes of an affidavit by a subscribing witness or witnesses to a purported will](#)
10 [or codicil of a decedent, which affidavit is executed pursuant to § 33-7-26, the phrase "before any](#)
11 [officer" contained in § 33-7-26\(2\), and the phrase "before me personally appeared" in § 33-7-26\(3\),](#)
12 [and any similar phrase in § 33-7-26 pertaining to the appearance of the witnesses before a notary](#)
13 [public for purposes of making an affidavit, those phrases shall include presence by means of video-](#)
14 [conference or other visual transmission where the affiant\(s\) and notary public can communicate](#)
15 [with each other simultaneously by sight and sound through an electronic device or process at the](#)
16 [time of notarization.](#)

17 **42-30.2-10. Two (2) year pilot program.**

18 [The provisions of this chapter shall take effect on July 1, 2021, and shall sunset and expire](#)
19 [on July 1, 2023. Provided, the expiration and sunset of this chapter shall not revoke or otherwise](#)
20 [impact the validity of a notarization properly made pursuant to the provisions of this chapter while](#)
21 [this chapter was in effect.](#)

22 SECTION 2. This act shall take effect on July 1, 2021, and shall sunset and expire on July
23 1, 2023.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- STANDARDS OF CONDUCT
FOR NOTARIES PUBLIC

- 1 This act would codify in the general laws the standards of conduct for notaries public in
- 2 the state of Rhode Island by the secretary of state which came into effect on April 3, 2020.
- 3 This act would take effect on July 1, 2021, and would sunset and expire on July 1, 2023.

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