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**REMOTE ONLINE NOTARY PRESENTATION TO  
WSBA SOLO AND SMALL PRACTICE SECTION  
APRIL 24, 2020**

**What is electronic notarization, or e-notarization?**

The notarial act is completed electronically with all participants physically present. The documents are in electronic form; the signatures are in electronic form. The notary and participants are in the same room. The notary will enter information, generally, into a physical journal, verify identification in person, etc.

**What is remote notarization?**

Remote online notarization or “RON” means that the notarial act is completed using a webcam with audio and video where participants are in different physical locations.

**Outline:**

- A. Law**
- B. DOL licensing requirements**
- C. Platform setup costs**
- D. Remote notarization process**
- E. Pitfalls**
- F. Disclaimer**

**A. THE LAWS**

**1) ESSB 6028 - UNIFORM ELECTRONIC TRANSACTIONS ACT**

- **Signed by Governor: March 18, 2020**
- **Effective Date: June 11, 2020**

<http://lawfilesexternal.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Passed%20Legislature/6028-S.PL.pdf?q=20200424090819>

**2) SB 5641 - AN ACT RELATING TO ELECTRONIC NOTARIAL ACTS BY REMOTELY LOCATED INDIVIDUALS**

- **Signed by Governor: April 26, 2019**
- **Effective Date: October 1, 2020**

<http://lawfilesexternal.leg.wa.gov/biennium/2019-20/Pdf/Bills/Senate%20Passed%20Legislature/5641.PL.pdf#page=1>

**3) RCW 42.45 REVISED UNIFORM LAW ON NOTARIAL ACTS – REVISIONS FROM SB 5641 APPEAR TO HAVE BEEN CODIFIED JUST THIS WEEK**

<https://app.leg.wa.gov/RCW/default.aspx?cite=42.45>

**4) GOVERNOR’S PROCLAMATION 20-27 ELECTRONIC NOTARY EFFECTIVE DATE**

- **Signed by Governor: March 24, 2020**
- **Effective Dates: March 27 – April 26, 2020**

Effective date provisions of SB 5641 waived and suspended.

<https://www.governor.wa.gov/sites/default/files/proclamations/20-27%20-%20COVID-19%20Notary%20%28tmp%29.pdf>

**5) WAC 308-30 – Amending WSR 18-12-028 (NOT YET CODIFIED)**

- **Adopted: May 29, 2018**
- **Effective Date: July 1, 2018**

<https://www.dol.wa.gov/business/notary/docs/308-30-2020adopted.pdf>

**ESSB 6028 - UNIFORM ELECTRONIC TRANSACTIONS ACT**

Amends numerous sections of the RCW – too many to review here; 96 pages

This chapter applies to any electronic record or electronic signature created, generated, sent, communicated, received, or stored on or after the effective date of this section.

Sections on notarization, record retention, admissibility in evidence, etc.

**RCW 42.45 REVISED UNIFORM LAW ON NOTARIAL ACTS**

**RCW 42.45.280 – new section**

**"Communication technology"** means an electronic device or process that allows an electronic records notary public and a remotely located individual to communicate with each other simultaneously by sight and sound.

**"Identity proofing"** means a process or service by which a third person provides an electronic records 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.

**"Remotely located individual"** means an individual who is not in the physical presence of the electronic records notary public who performs a notarial act under subsection (3) of this section. A remotely located individual complies with RCW 42.45.040 by using communication technology to appear before an electronic records notary public.

An electronic records notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

- (a) The electronic records notary public:
  - (i) Has personal knowledge under RCW 42.45.050(1) of the identity of the remotely located individual;
  - (ii) Has satisfactory evidence of the identity of the remotely located individual by a verification on oath or affirmation of a credible witness appearing before and identified by the electronic records notary public under RCW 42.45.050(2); or
  - (iii) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;
- (b) The electronic records notary public is reasonably able to confirm that a record before the electronic records 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 electronic records notary public, or a person acting on behalf of the electronic records notary public, creates an audio visual recording of the performance of the notarial act; and
- (d) For a remotely located individual located outside the United States:
  - (i) The record:
    - (A) 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; or
    - (B) Involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and
  - (ii) 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.

If a notarial act is performed under this section, the certificate of notarial act required by RCW 42.45.130 and the short form certificate provided in RCW 42.45.140 must indicate that the notarial act was performed using communication technology.

Before an electronic records notary public performs the electronic records notary public's initial notarial act under this section, the electronic records notary public must notify the director that the electronic records notary public will be performing notarial acts and identify the technologies the electronic records notary public intends to use.

**RCW 42.45.130**

(g) If the notarial act is performed under section 1 of this act, indicate that the notarial act was performed using communication technology.

**RCW 42.45.140**

Minor changes to the signature block language for each type of notarial act.

Instead of “on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.”

Now: “Signed or attested before me by means of communication technology on \_\_\_\_\_ by \_\_\_\_\_.”  
(Date) Name(s) of individual(s)

**WAC 308-30 – NOT YET CODIFIED; LAST UPDATE 5/29/2018**

**308-30-020 Definitions**

**“Appear personally”**

For remote notarial acts, being in a different physical location from another individual but able to see, hear, and communicate with that individual by means of communication technology.

**"Remote notarial act"**

A notarization that is performed electronically using approved audio-video technology that allows for direct interaction between the notary and the individuals that are remotely located.

**WAC 308-30-030 Application process**

(6) To apply for a remote notary endorsement, an electronic records notary public shall submit a remote notary endorsement application on forms provided by the department.

- (7) An applicant may only apply for a remote notary endorsement if:
- (a) They currently hold an active notary public commission and with an electronic records notary public endorsement;
  - (b) They currently hold an active notary public commission, and are applying for an electronic records notary public endorsement and a remote notary endorsement simultaneously; or
  - (c) They are applying for a notary public commission, an electronic records notary public endorsement, and a remote notarial acts endorsement simultaneously.

### **WAC 308-30-220 Fees**

Fees for in-person notarial acts are set at a maximum of \$10 each.

New section allows for a maximum fee of \$25 for performing a remote notarial act.

### **WAC 308-30-290 Authorized remote notarial acts.**

- Taking an acknowledgment;
- Taking a verification on oath or affirmation;
- Witnessing or attesting a signature;
- Certifying or attesting a copy;
- Certifying that an event has occurred or an act has been performed
- Noting a protest of a negotiable instrument (upon meeting certain other criteria)

### **WAC 308-30-300 ID Verification**

If the notary does not have personal knowledge of the identity of a remotely-located person, then two different types of identity proofing are required:

- 1) credential analysis (driver's license or state ID must be presented; passports not allowed)
- 2) a dynamic knowledge-based authentication assessment (KBA) must be successfully completed

The remotely located individual must answer a quiz consisting of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;

- Each question must have a minimum of five possible answer choices;
- At least eighty percent of the questions must be answered correctly;
- All questions must be answered within two minutes;
- If the remotely located individual fails the first attempt, the individual may retake the quiz one time within twenty-four hours;

- During a retake of the quiz, a minimum of forty percent of the prior questions must be replaced;
- If the remotely located individual fails the second attempt, the individual is not allowed to retry with the same online notary public within twenty-four hours of the second failed attempt

**WAC 308-30-310 Standards for communication technology.**

- Synchronous audio-visual feeds of sufficient audio clarity and video resolution
- Notary public and remotely located individuals must be able to see and speak with each other
- If a remotely located individual must exit the workflow, the individual must restart the identify verification process required under WAC 308-30-300 from the beginning.

**WAC 308-30-320 Language for signature blocks**

- (1) Certificate must contain this language to meet RCW requirements:  
"This notarial act involved the use of communication technology."
- (2) Short forms for acknowledgment, verification on oath/affirmation, witnessing/attesting a signature. Be sure to adjust your signature blocks accordingly, for example: For witnessing or attesting a signature:

State of Washington    )  
  )  
County of King            )

Signed or attested before me by means of communication technology on (date) by (name(s) of individuals).

(Electronic official stamp)	Signature of notary public Notary Public My commission expires:
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**WAC 308-30-330 Retention of Recordings; Repositories**

( 1) A notary public must retain any audio-visual recording created under RCW 42.45.280 (3) (c) in a computer or other electronic storage device that protects the recording against unauthorized access by password or other secure means of authentication. The recording must be created in an industry-standard audio-visual file format and must not include images of any electronic record that was the subject of the remote notarial act.

(2) An audio-visual recording must be retained for at least ten years after the recording is made.

(7) A notary public, or the notary's personal representative or guardian, may by written contract engage a third party to act as a repository to provide the storage required by this section. A third party under contract under this section shall be deemed a repository under RCW 42.45.280(6).

## **B. DOL LICENSING REQUIREMENTS**

Remote Online Notaries must meet the following criteria:

- Licensed Washington State Notary
- Electronic Notary Endorsement (\$15)
- Remote Online Notary (RON) Endorsement (no additional charge)
- Engage a vendor for an electronic signature certificate
- Engage a vendor to obtain the platform with proper authentication to conduct remote online notarizations

Washington Public Notary Handbook – July 1, 2018

<https://www.dol.wa.gov/business/notary/docs/notary-handbook.pdf>

Vendors currently vetted by Washington State DOL:

- [DocVerify](#)
- [Notarize](#)
- [NotaryCam](#)
- [Pavaso](#)
- [Safedocs](#)
- [SIGNiX](#)
- [Nexsys Clear Sign](#)

## **C.**

### **D. PLATFORM COSTS – SETUP, CERTIFICATE, SUBSCRIPTION, DOCUMENT CREDITS, ID VERIFICATION CREDITS**

DocVerify costs

- One-time set-up fee: \$100
- Digital signature certificate: \$100 for five years
- Subscription: “Enterprise” edition needed; \$50/month or \$40/month if paid annually

- E-signature credits: 360 advanced if annual purchase; otherwise 30 credits per month. One credit used per document, or 4 credits per “packet” of unlimited documents. Unused credits do not roll over.

\*\* Additional credits are expensive: 2/\$10, with slightly better costs of about \$3 per e-signature from there. 250 credits are \$750, so it’s best to simply buy another license for \$480 if you’re going to need that many.

- ID verification credits: One used per participant; must re-set the entire notarization process and use additional credits if a participant fails the ID verification or if the notary session fails for some other reason. Credits are \$2 each with a minimum purchase of 10 credits at a time.
- No phone support; no weekend or evening support.

## **E. NOTARIZATION PROCESS VIA DOCVERIFY**

1. The attorney or signer provides the document(s) to be notarized to the notary public, preferably in Word format, as the signature blocks may need to be adjusted.
2. The attorney or signer provides full names and email addresses of all participants – principal signers, witnesses, and observers – to the notary.
3. The notary public uploads the documents to the platform – many documents can be signed by the same participants in a single session, provided they do not exceed the maximum file size. The notary places signature and form fields onto the documents.
4. The notary adds the participants to the platform and emails go out to the principals and witnesses to complete the ID verification process.
5. The notary is notified as each participant successfully completes the ID verification process. When everyone has successfully completed, the notary schedules the session with the participants.
6. At the scheduled time, the notary begins the session by inviting participants to join by link. When all participants are online, the notary gives a brief overview of the process and then begins recording the session.
7. During the recording, participants are asked to state their names and present their IDs to their cameras. Principals are asked to identify each document that they are signing and if required, the notary administers an oath/affirmation or certification.

8. Participants click buttons to add their signatures/initials. The notary can see when everyone has signed.
9. The notary indicates that s/he will then notarize the document, at which time the recording stops and the participants are disconnected.
10. The participants receive the notarized documents by email within seconds.

## **F. PITFALLS – ID VERIFICATION AND TECHNOLOGY FAILURES**

### **ID VERIFICATION**

Each principal or witness to a notarial act must complete and pass an ID verification process prior to the notarial session. This includes uploading of picture ID and successful completion of a multiple-choice Knowledge-Based Authentication survey.

Persons subject to the notarial act(s) must be U.S. citizens and have:

- A valid email address (signers may not share an email address)
- A valid mobile phone number
- A valid social security number
- A valid state-issued driver's license or state ID
- A sufficient credit record (five years) with an "unlocked" credit report

### **TECHNOLOGY / PARTICIPANTS**

- Participants must have a device with a webcam and microphone. Laptops, desktops, and large tablets are acceptable; smart phones are discouraged, as they do not allow for full viewing of the participants and documents.
- Each participant in an individual session must have his or her own device; the device may not be shared during the session.
- Participants must have access to high-speed broadband with all network and devices properly configured.
- Participants must use Google Chrome, Firefox, or Safari as their browser during the session

### **TECHNOLOGY / PLATFORM**

One participant has worked well for me; more than one participant has resulted in video dropping, causing loss of credits and sometimes not being able to follow through with the notarization.

DocVerify claims that the video-dropping issue appears to be caused by internet and broadband providers that are "throttling" the amount of data that can go back and forth. This is resulting in reduced bandwidth and causing dropped video.

In speaking with notary client who is an IT professional, he said the problem is NOT with internet providers, and that the problem is on DocVerify's end. Their platform technology has not kept up with the increased demand for remote notarization.

## **G. DISCLAIMER – DOES REMOTE NOTARIZATION MEET THE REQUIREMENT OF RCW 11.12.020?**

**Individual practitioners should consider this information in deciding whether to proceed with remote online notarization. A notary public is liable only regarding compliance with notarization laws, and not for determining whether notarizing a particular document is legal or whether the remote notarization process is legal for specific situations.**

The following is a summary of a discussion that occurred on the Family Law Section listserv as to RCW 11.12.020, which requires that the witnesses to a will sign "in the presence of the testator."

There was concern that a notary completing a remote notary session is verifying the signature of the witnesses, but that the witnesses may not be considered to be "in the presence of" the testator.

The RCW does not appear to define "presence" or "in the presence of."

Black's Law Dictionary defines "presence" as:

The existence of a person in a particular place at a given time, particularly with reference to some act done there and then. Besides actual presence, the law recognizes constructive presence, which latter, may be predicated of a person who, though not on the very spot, was near enough to be accounted present by the law, or who was actively cooperating with another who; was actually present.

Also:

The English statute of fraud directs that all devises and bequests of any lands or tenements shall be attested or subscribed in the presence of said devisor. Under this statute it has been decided that an actual presence is not indispensable, but that where there was a constructive presence it was sufficient; as, where the testatrix executed the will in her carriage standing in the street before the office of her solicitor, the witness retired into the office to attest it, and it being proved that the carriage was accidentally put back, so that she was in a situation to see the witness sign the will through the window of the office.

One may conclude that during remote notarization, everyone is "present" via audio/video platform, and can see and hear each other at the same time. It could be argued that the witnesses are constructively present.

There was additional discussion as whether the remote notarial act would pass the "line-of-sight" test.

The following analysis is courtesy of a member of the family law section via the listserv, and is verbatim from his post:

It's presently unsettled in Washington law according to Reutlinger Law of Wills and Intestate Succession (WSBA 3d ed. 2018). The relevant passage is:

The requirement that the witnesses sign in the testator's "presence" (like the similar requirement in many jurisdictions that the testator sign in the witnesses' presence, or that the witnesses sign in each other's presence) is fraught with uncertainty and has resulted in numerous tests and formulas, from the strict "line of sight" test to the far more flexible "conscious presence" requirement.<sup>44</sup> The only case in Washington that has referred to this requirement seems to have adopted a fairly strict test of the witness's being "within the scope of the testator's vision from his actual position."<sup>45</sup> In that case, the testator was waiting on the back porch as the witness signed the will two rooms away, with the door between those two rooms closed.<sup>46</sup> This would have failed any test of presence, no matter how lenient. There was thus no occasion for the court to discuss such variations that have been developed in other jurisdictions as whether it would suffice if the testator could have seen the witnesses' act if he had bothered to look, if he had changed position slightly, if he had been aware of the act through his other senses, and so on.<sup>47</sup> Unless and until these issues arise in Washington, therefore, it is unclear which of the various views on "presence" our courts are likely to accept. At present it is safest to assume they will follow a strict line of sight test. It is likely, however, that should the issue arise in the future, the court will apply a more modern, flexible approach to presence and will not be bound by the strict, mechanical approach that the present limited authority appears to imply.<sup>48</sup>

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<sup>42</sup> *In re Miller's Estate*, [146 Wash. 324, 326, 262 P. 646](#) (1928).

<sup>43</sup> *In re Estate of Price*, [73 Wn.App. 745, 871 P.2d 1079](#) (1994) (witness signed as notary, but signature had all the necessary elements of attestation and so was valid as such). *But cf. In re Estate of Black*, [153 Wn.2d 152, 102 P.3d 796](#) (2004) (notary lacked personal knowledge of the testator's signing and other attributes of an attesting witness, so was deemed to have signed

only as a notary and not as a witness). One cannot sign in both capacities. *Id.* n.10; *see also In re Estate of Knowles*, [135 Wn.App. 351, 361-62, 143 P.3d 864](#) (2006).

[44](#) *See generally* Thomas E. Atkinson, HANDBOOK OF THE LAW OF WILLS §72 (2d ed. 1953); 2 Jeffrey A. Schoenblum, PAGE ON THE LAW OF WILLS §§19.119-19.128 (2003 & Supp. 2016). Under this test it is required only that the testator be aware of the witnesses signing through any one of the testator's senses, whether sight or hearing or just a "general consciousness" that the act is taking place.

[45](#) *In re Jones'Estate*, [101 Wash. 128, 132, 172 P. 206](#) (1918). Although numerous non-Washington authorities were cited, the court in *Jones's Estate* declined to elaborate on the requirement, because it was only one of many grounds for invalidating the will.

[46](#) *Id.* at 130.

[47](#) *See* authorities cited in note 44.

[48](#) The conscious presence test is clearly the modern approach (*see, e.g.,* UNIF. PROB. CODE §2-502(a)(2) (2010)), and given the general trend toward liberalizing execution requirements, it is very likely the one that the court would choose.