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FILING CAPTION: Implementation of remote online notarization, per HB 4212 (2020) as pertains to ORS 194.

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RULES:

160-100-0000, 160-100-0140, 160-100-0146, 160-100-0210, 160-100-0215, 160-100-0400, 160-100-0805, 160-100-0855

AMEND: 160-100-0000

NOTICE FILED DATE: 12/30/2020

RULE SUMMARY: Definitions as used in ORS 194.205 to 194.990, and OAR 160-100-0000 to 160-100-0850.
Amended to include text of and replace temporary rule 160-100-1200.

CHANGES TO RULE:

160-100-0000

Definitions ¶¶

As used in ORS 194.205 to 194.990, and OAR 160-100-0000 to 160-100-070850:¶

(1) "Public Records Address" shall mean postal or street address.¶

(2) "Days" means calendar days.¶

(3) "Electronic notarial signature" means ~~the an~~ electronic signature, as defined in ~~section 2, ch. 219, Oregon Laws 2013~~ ORS 194.215, used by the notary to officially sign electronic records.¶

(4) "Notary," as used in these rules, means "notary public."¶

(5) "Oath of Office" in accordance with ORS 194.315(3), a notary public shall keep on file an Oath of Office with the Secretary of State, affirming the notary's intent to follow the laws and constitutions of the United States of America and the State of Oregon.¶

(6) "Official Misconduct" means the grounds to deny, revoke, suspend, or condition the commission of a notary public, as stated in ORS 194.340.¶

(7) "Official Stamp" or "Official Notary Stamp" means a physical image affixed to a tangible record that can be legibly reproduced by a photographic method, and that meets the description of OAR 160-100-0100; or information required under 160-100-0100(3) that is attached to or logically associated with an electronic record. An official stamp does not include a stamping device, as defined in ORS 194.215(17). The official stamp of a notary

public is an official notarial seal for all purposes under the law of this state.¶

(8) "Practice" means conducting a course of repeated notarizations in Oregon beyond a 30-day period.¶

(9) "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.¶

(10) "Secretary of State" means the Corporation Division of the Secretary of State's office.¶

~~(11)~~ Remote online notarization" means a notarial act performed for a remotely located individual by means of communication technology.¶

(11) "Remote online notarization vendor" means a third-party that offers the services of a tamper-evident technology approved for remote online notarization acts.¶

(12) "Secretary of State" means the Corporation Division of the Secretary of State's office.¶

(13) "Tamper-evident" means in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident.¶

(14) "Venue" shall include both the jurisdiction of the Oregon notary public and the county in which the notarial act was performed.

Statutory/Other Authority: ORS 194.360

Statutes/Other Implemented: ORS 194.315, HB 4212 (2020), ORS 194.215, ORS 194.340

AMEND: 160-100-0140

NOTICE FILED DATE: 12/30/2020

RULE SUMMARY: Requirements of notaries public wishing to perform notarial acts with respect to electronic records. Amended to add 160-100-0140(6).

CHANGES TO RULE:

160-100-0140

Notification of Secretary of State of the Use of Electronic Notarization ¶¶

(1) A notary public who wishes to perform notarial acts with respect to electronic records shall file the following information using the prescribed form with the Secretary of State before such notarization:¶¶

(a) Commission name;¶¶

(b) Commission number;¶¶

(c) Public records address;¶¶

(d) Email address;¶¶

(e) Name of electronic notarization technology vendor;¶¶

(f) Contact information for electronic notarization vendor;¶¶

(g) Website for electronic notarization vendor;¶¶

(h) A statement under penalty of perjury that the method of electronic notarization meets the July 13, 2011, National Electronic Notarization Standards adopted by the National Association of Secretaries of State. For the purposes of this statement, the notary may rely on an electronic notarization vendor's declaration that the technology does meet these standards; and¶¶

(i) An exemplar of a notarized record that includes the notary's official stamp, the electronic notarial signature, and the electronic notarial certificate. The exemplar shall be a generic sample and not an actual notarized private record.¶¶

(2) The example provided in section ~~1~~(1) of this rule must be an electronic file submitted in a PDF format.¶¶

(3) In addition to any other technologies used in attaching the electronic notarial signature, the signature must include a graphic reproduction of the notary's handwritten signature on file with the Secretary of State.¶¶

(4) In addition to any other technologies and information the notary's official stamp, as evidenced by an official Certificate of Authorization issued by the Secretary of State, shall be logically associated with the notarial certificate and underlying record.¶¶

(5) The notice under this rule shall be emailed to the Secretary of State using the form provided to the notary public.¶¶

(6) Once information is received and approved by the Secretary of State, a confirmation will be sent to the notary to verify approval.

Statutory/Other Authority: ORS 194.305, ORS 194.360

Statutes/Other Implemented: ORS 194.305, HB 4212 (2020)

ADOPT: 160-100-0146

NOTICE FILED DATE: 12/30/2020

RULE SUMMARY: Requirements of notaries public wishing to perform notarial acts with respect to electronic records. Replaces temporary rule 160-100-1210.

CHANGES TO RULE:

160-100-0146

Notification of Secretary of State of the Use of Remote Online Notarization

A commissioned Notary Public may apply to the Secretary of State to perform remote online notarizations using communication technology after completing the required Remote Online Notarization training and receiving acknowledgment from the Secretary of State.

(1) A notary public who wishes to perform notarial acts with respect to remote online notarization shall file the following information using the prescribed form with the Secretary of State before such notarization:

(a) Commission name;

(b) Commission number;

(c) Public records address;

(d) Email address;

(e) Name of remote online notarization vendor(s);

(f) Contact information for remote online notarization vendor(s);

(g) Website for remote online notarization vendor(s);

(h) Attached copy of electronic stamp and signature as generated by the remote online notarization vendor; and

(i) A statement under penalty of perjury that the technology and method of remote online notarization meets the system requirements in this chapter. For the purposes of this statement, the notary may rely on a remote online notarization vendor's declaration that the technology and method does meet these standards.

(2) Once information is received and approved by the Secretary of State, a confirmation will be sent to the notary to verify approval.

Statutory/Other Authority: ORS 194.360

Statutes/Other Implemented: HB 4212 (2020)

AMEND: 160-100-0210

NOTICE FILED DATE: 12/30/2020

RULE SUMMARY: Requirements for use of electronic notarial journal. Replaces temporary rule 160-100-1230.

CHANGES TO RULE:

160-100-0210

Form and Content of an Electronic Notarial Journal ¶

(1) A notary may record an electronic act~~s~~notarization in a paper notarial journal, an electronic notarial journal, or both.¶

~~(2) The entry requirements set out in ORS 194.300(3) shall apply also to the electronic notarial journal.¶~~

~~(3) In an electronic notarial journal, the signature of the signer must be:¶~~

(a) Attached to or logically associated with the electronic notarial journal.¶

(b) Linked to the data in such a manner that any subsequent alterations to the electronic notarial journal entry are detectable and may invalidate the electronic notarial journal entry.¶

(3) Entries from the notarial journal must be available upon demand by the Secretary of State in a PDF format.¶

(4) If submission of the notarial journal is required under these rules, the electronic notarial journal must be submitted in a single PDF file.¶

(5) Actions completed as part of a remote online notarization act must be recorded in an electronic notary journal, which may be provided by the remote online notarization vendor.¶

(6) Each entry in any electronic journal shall meet the requirements under ORS 194.300.

Statutory/Other Authority: ORS 194.360

Statutes/Other Implemented: ORS 194.300, HB 4212 (2020)

ADOPT: 160-100-0215

NOTICE FILED DATE: 12/30/2020

RULE SUMMARY: Provides for electronic notary journal storage for remote online notarizations. Replaces temporary rule 160-100-1240.

CHANGES TO RULE:

160-100-0215

Storage of Electronic Notarial Journal

(1) The records of a notary public shall remain within the exclusive control of the notary public at all times. The notary must ensure that records of remote online notarizations are retained in compliance with ORS 194.300.

(2) Records of a remote online notarization shall be maintained electronically in devices that are capable of recording the information required by OAR 160-100-0210 and OAR 160-100-0850.

(3) A remote online notary public may contract with a remote online notarization vendor to provide such storage if the remote online notarization vendor:

(a) has provided reasonable evidence to the remote online notary public that it is capable of providing such services; and

(b) provides complete access to the remote online notary public of all the remote online notary's records for an agreed period of time. If the contract between the remote online notary public and the remote online notarization vendor is terminated, all records must be transferred to the remote online notary public.

Statutory/Other Authority: ORS 194.360, ORS 194.300

Statutes/Other Implemented: HB 4212 (2020)

AMEND: 160-100-0400

NOTICE FILED DATE: 12/30/2020

RULE SUMMARY: Provides fees a notary may charge. Modified to include addition of fees for remote online notarization as prescribed by HB 4212 (2020). Replaces temporary rule 160-100-1220.

CHANGES TO RULE:

160-100-0400

Maximum Amount of Notary Fees Permitted to be Charged ¶

(1) Notwithstanding section 2 of this rule, a notary public shall not charge, attempt to charge, or receive a notary fee that is more than \$10 per notarial act.¶

(2) In accordance with ORS ~~194.400~~(2)(a)(b) and 194.400(3), a notary may also charge a fee for traveling to perform a notarial act.¶

(3) A notary public performing a remote online notarization shall not charge, attempt to charge, or receive a notary fee that is more than \$25 per notarial act.

Statutory/Other Authority: ORS 194.360

Statutes/Other Implemented: ORS ~~194.3400, 194.400~~HB 4212 (2020)

ADOPT: 160-100-0805

NOTICE FILED DATE: 12/30/2020

RULE SUMMARY: Requirements when using credential analysis and authentication for remote online notarization.
Replaces temporary rule 160-100-1250.

CHANGES TO RULE:

160-100-0805

Credential Analysis and Authentication for Remote Online Notarization

- (1) The requirement for at least two different types of identity proofing under ORS 194.240 is satisfied if the notary public identifies a remotely located individual in accordance with the requirements of this section.
- (2) Credential analysis must be provided by a reputable third-party remote online notarization vendor or software tool that can demonstrate proven credential analysis processes and shall employ technology that provides the following:
- (a) The signer's identity must be linked to the signer following successful knowledge-based authentication; and
- (b) Remote online notarization shall provide for human visual comparison between the signer and the signer's identification presented to the notary.
- (3) Remote online notarization providers shall use an automated software process to aid the notary in verifying each signer's identity.
- (a) The identification shall pass an authenticity test that:
- (A) Uses appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;
- (B) Uses appropriate technologies to confirm that the identification is not fraudulent or inappropriately modified;
- (C) Uses information held or published by the issuing source or authoritative source, as available, to confirm the validity of the identification details; and;
- (D) Provides the result of the authenticity test to the notary.
- (b) The credential analysis procedure shall enable the notary to visually compare the following for consistency:
- (A) The information and photo on the identification image presented; and
- (B) The signer as viewed by the notary in real time through the audio/video system.
- (c) If the notary public is unable to validate the identification of the signer, or to match the signer's physical features with the credential, the notary public shall not complete the notarial act.
- (d) The identification shall meet the requirements of ORS 194.240.
- (e) All identification images necessary to perform visual inspection and credential analysis shall be captured and the notary shall confirm that:
- (A) The signer is in possession of the identification at the time of the notarial act;
- (B) The identification images submitted for credential analysis have not been manipulated; and
- (C) The identification images match the identification in the signer's possession.
- (f) The following general principles shall be considered in the context of image resolution:
- (A) Image resolution shall be sufficient for the issuing source or authoritative source to perform credential analysis per the requirements above; and
- (B) Image resolution shall be sufficient to enable visual inspection by the notary, including legible text and clarity of photographs, barcodes, and other identification features; and
- (4) Knowledge-based authentication procedure must meet the following requirements:
- (a) Each signer must answer questions and achieve a passing score. The procedure must include:
- (A) Five multiple choice questions, drawn from public or private data sources.
- (B) A minimum of five possible answer choices per question.
- (C) Require that 80% of the questions are correctly answered within two minutes by the signer.
- (b) Each signer is to be provided a reasonable number of attempts per signing session.
- (A) If a signer fails their first quiz, they may attempt up to two additional quizzes within 48 hours from the first

failure.

(B) During any quiz retake, a minimum of 40% (2) of the prior questions shall be replaced.

(c) If biometric sensing technologies are used for remote online notarization in the areas of authentication, credential analysis, and identity proofing verification may include facial, voice, and fingerprint recognition.

(5) If a signer exits the notarial act during the notarial act, they shall restart the credential analysis and knowledge-based authentication workflow from the beginning.

Statutory/Other Authority: ORS 194.360

Statutes/Other Implemented: HB 4212 (2020)

ADOPT: 160-100-0855

NOTICE FILED DATE: 12/30/2020

RULE SUMMARY: Provides specific guidelines and information regarding credential analysis and authentication for remote online notarization. Replaces temporary rule 160-100-1260.

CHANGES TO RULE:

160-100-0855

General Technology Requirements for Remote Online Notarization

(1) Each document completed as part of a remote online notarization shall be electronically signed and rendered tamper-evident.¶

(2) The method of remote online notarization shall ensure privacy and data security.¶

(3) The method of remote online notarization shall ensure all applicable consumer data, privacy and information security laws are satisfied through their information security programs.¶

(4) Records of a remote online notarization must be retained in a safe and secure manner for ten years following the date of the notarization. Records must be available to the Secretary of State upon request.¶

(5) The audio and video quality requirements for a remote online notarization operating model should:¶

(a) Consist of reliable, continuous, synchronous audio and video feeds with clarity such that all participants can be clearly seen and understood.¶

(b) Ensure the audio and video are adequate for communication and ability to terminate the session if adequate conditions are not met.¶

(6) The audio/video recording shall:¶

(a) Include the person-to person interaction required as part of the notarial act;¶

(b) Be logically associated to the electronic notary journal;¶

(c) Be capable of being viewed and heard using broadly available audio/video players.¶

(7) The transaction documents executed in the remote online notarization act shall not be recorded as part of the video recording.

Statutory/Other Authority: ORS 194.360

Statutes/Other Implemented: HB 4212 (2020)