

VERMONT STATUTES

**TITLE 8. BANKING AND INSURANCE
PART 4. FINANCIAL AND RELATED INSTITUTIONS
CHAPTER 204. POWERS OF FINANCIAL INSTITUTIONS
SUBCHAPTER 5. SAFE DEPOSIT BOXES**

§ 14501. Failure to pay rent; removal of contents

(a) If the amount due for the use of any safe or box in the vaults of a financial institution is not paid for one year, or such other period as may be fixed in the contract of renting of such safe or box, the financial institution, at the expiration thereof, may cause to be sent to the person in whose name the safe or box stands on its books, a notice in writing that if the amount then due for the use of the safe or box is not paid within 60 days from the date of the notice, the financial institution will then cause the safe or box to be opened in the presence of an officer duly authorized by the governing body and of a notary public not an officer or in the employ of the financial institution, and the contents thereof, if any, will be sealed up by the notary in a package upon which the notary will distinctly mark the name and address of the person in whose name such safe or box stands upon the books of the financial institution and the estimated value thereof. The package so sealed and addressed, when marked for identification by the notary, will be placed by the notary in one of the general safes or boxes of such financial institution. The notice shall be sent in a postage prepaid registered letter directed to that person at his or her post office address as recorded upon the books of the financial institution, and at his or her last known address.

(b) The proceedings of the notary shall be fully set forth in the notary's own handwriting and official seal in a book to be kept by the financial institution for that purpose. After such contents have been so placed in general safes or boxes, the financial institution shall be required to use only the degree of care required of a bailee for the sole benefit of the bailor notwithstanding the contract of renting requires a higher degree of care during the period of renting.

History

Added 1999, No. 153 (Adj. Sess.), § 2, eff. Jan. 1, 2001.

**TITLE 9. COMMERCE AND TRADE
PART 2. NEGOTIABLE INSTRUMENTS AND DOCUMENTS OF TITLE
CHAPTER 20. UNIFORM ELECTRONIC TRANSACTIONS ACT**

§ 280. Notarization and acknowledgment

If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

History

Added 2003, No. 44, § 1, eff. Jan. 1, 2004.

**TITLE 11. CORPORATIONS, PARTNERSHIPS AND ASSOCIATIONS
CHAPTER 1. CORPORATIONS GENERALLY
SUBCHAPTER 4. DIRECTORS AND OFFICERS**

§ 231. Acknowledgments by stockholder or officer

A person legally qualified to take acknowledgments shall not be disqualified to take such acknowledgments to an instrument in which a corporation is a party, by reason of his being a stockholder in or an officer or employee of such corporation.

History

Source.

V.S. 1947, § 5828. P.L. § 5854. G.L. § 4943. 1917, No. 95, § 1.

TITLE 12. COURT PROCEDURE
PART 10. OATHS AND FORMS
CHAPTER 211. OATHS
SUBCHAPTER 2. ADMINISTRATION OF OATHS

§ 5852. Oaths of office; by whom administered.

When other provision is not made by law, oaths of office may be administered by any justice of the supreme court, superior judge, assistant judge, justice of the peace, notary public or the presiding officer, secretary or clerk of either house of the general assembly or by the governor.

History

Amended 1965, No. 194, § 10, eff. July 1, 1965, operative Feb. 1, 1967; 1971, No. 185 (Adj. Sess.), § 169, eff. March 29, 1972; 1991, No. 22; 2009, No. 154 (Adj. Sess.), § 88.

§ 5854. Oaths, administering by court clerks, justices, notaries, etc.; certification.

The clerk of the supreme court, county clerks, justices of the peace, judges and registers of probate, judges and clerks of the district court, notaries public and masters appointed by a county court under an order of referee may administer oaths in all cases where an oath is required, unless a different provision is expressly made by law; and a notary public need not affix his official seal to a certificate of an oath administered by him. County clerks and clerks of the district court may certify the oaths administered by them under the seal of the court.

History

Amended 1965, No. 194, § 10, eff. July 1, 1965, operative Feb. 1, 1967; 1971, No. 185 (Adj. Sess.), § 170, eff. March 29, 1972; 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 2009, No. 154 (Adj. Sess.), § 238.

TITLE 26. PROFESSIONS AND OCCUPATIONS
CHAPTER 103. NOTARIES PUBLIC
SUBCHAPTER 1. GENERAL PROVISIONS

§ 5301. Short title

This chapter may be cited as the Uniform Law on Notarial Acts.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5302. Uniformity of application and construction

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5303. 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 U.S.C. § 7001 et seq., but does not modify, limit, or supersede Section 101(c)

of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b).

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5304. Definitions

As used in this chapter:

(1) “Acknowledgment” means a declaration by an individual before a notary public 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) “Certificate” or “notarial certificate” means the part of, or attachment to, a notarized document that is completed by a notary public, bears the required information set forth in section 5367 of this chapter, and states the facts attested to or certified by the notary public in a particular notarization.

(3) “Commission term” means the two-year period commencing on February 1 and continuing through January 31 of the second year following the commencement of the term.

(4) “Communication technology” means an electronic device or process operating in accordance with section 5380 of this chapter and any standards adopted by the Office pursuant to section 5323 of this chapter that:

(A) allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(B) when necessary and consistent with other applicable laws, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

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

(6) “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.

(7) “Foreign state” means a government other than the United States, a state, or a federally recognized Indian tribe.

(8) “Identity proofing” means a process or service operating in accordance with section 5380 of this chapter and any standards adopted by the Office pursuant to section 5323 of this chapter by which a third 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.

(9) “In a representative capacity” means acting as:

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

(B) a public officer, personal representative, guardian, administrator, executor, trustee, or other representative, in the capacity stated in a record;

(C) an agent or attorney-in-fact for a principal; or

(D) an authorized representative of another in any other capacity.

(10)

(A) “Notarial act” means an act, whether performed with respect to a tangible or an electronic record, that a notary public 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, attesting a signature, certifying or attesting a copy, and noting a protest of a

negotiable instrument.

(B) “Notarial act” does not include a corporate officer attesting to another corporate officer’s signature in the ordinary course of the corporation’s business.

(C) Nothing in this chapter shall be construed to require the use of a notary public to witness a signature that is allowed by law to be witnessed by an individual who is not a notary public.

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

(12) “Notary public” means an individual commissioned to perform a notarial act by the Office.

(13) “Office” means the Office of Professional Regulation within the Office of the Secretary of State.

(14) “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.

(15) “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.

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

(17) “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.

(18) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a notarial act under section 5379 of this chapter.

(19) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

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

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

(21) “Stamping device” means:

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

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

(22) “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.

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

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2019, No. 30, § 27; 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.

§ 5305. Exemptions

(a) Judiciary-and law enforcement-related employees.

(1) Employee exemptions.

(A) Judiciary-related.

(i) The persons set forth in subdivision (2)(A) of this subsection, when acting within the

scope of their official duties, are exempt from all of the requirements of this chapter, including the requirement to pay the fee set forth in section 5324 of this chapter, except for the requirement to apply for a commission as set forth in subsections 5341(a), (c), (d), and (e) and subdivisions (b)(1)-(3) of this chapter.

(ii) A commission issued to a person under this subdivision (A) shall not be considered a license.

(B) Law enforcement-related.

(i) The persons set forth in subdivision (2)(B) of this subsection, when acting within the scope of their official duties, shall be commissioned as notaries public authorized to perform a notarial act as a matter of law and are exempt from all of the requirements of this chapter, including the requirement to pay the fee set forth in section 5324 of this chapter.

(ii) A notarial act that identifies the notary public as a person who is exempt under this subdivision (B) shall establish as a matter of law that the person is commissioned as a notary public for the purpose of acting within the scope of official duties under this subsection.

(2) Employees, defined.

(A) Judiciary-related. Persons employed by the Judiciary, including judges, Superior Court clerks, court operations managers, Probate registers, case managers, docket clerks, assistant judges, county clerks, and after-hours relief from abuse contract employees.

(B) Law enforcement-related. Persons employed as law enforcement officers certified under 20 V.S.A. chapter 151; who are noncertified constables; or who are employed by a Vermont law enforcement agency, the Department of Public Safety, of Fish and Wildlife, of Motor Vehicles, of Liquor and Lottery, of Corrections, or for Children and Families, the Office of the Defender General, the Office of the Attorney General, or a State's Attorney or Sheriff.

(3) Official duties, defined. As used in subdivision (1) of this subsection, "acting within the scope of official duties" means that a person is notarizing a document that:

(A) the person believes is related to the execution of the person's duties and responsibilities of employment or is the type of document that other employees notarize in the course of employment;

(B) is useful or of assistance to any person or entity identified in subdivision (2) of this subsection (a);

(C) is required, requested, created, used, submitted, or relied upon by any person or entity identified in subdivision (2) of this subsection (a);

(D) is necessary in order to assist in the representation, care, or protection of a person or the State;

(E) is necessary in order to protect the public or property;

(F) is necessary to represent or assist crime victims in receiving restitution or other services;

(G) relates to a Vermont or federal court rule or statute governing any criminal, postconviction, mental health, family, juvenile, civil, probate, Judicial Bureau, Environmental Division, or Supreme Court matter; or

(H) relates to a matter subject to Title 4, 12, 13, 15, 18, 20, 23, or 33 of the Vermont Statutes Annotated.

(b) Attorneys.

(1) Attorneys licensed and in good standing in this State are exempt from:

(A) the examination requirement set forth in subsection 5341(b) of this chapter; and

(B) the continuing education requirement set forth in section 5343 of this chapter.

(2) If a complaint of a violation of this chapter is filed in regard to a Vermont licensed attorney, the Office shall refer the complaint to the Professional Responsibility Board and shall

request a report back from the Board regarding the final disposition of the complaint.

(c) Town clerks, assistants, and justices of the peace.

(1)

(A) A town clerk and his or her assistants may perform notarial acts as notaries public throughout the town clerk's county, provided that they shall comply with all of the requirements of this chapter, except as provided in subdivision (2) of this subsection.

(B) Subject to the provisions of subdivision (A) of this subdivision (1), performing notarial acts as a notary public shall be considered within the scope of the official duties of a town clerk and his or her assistants.

(2) Justices of the peace and town clerks and their assistants are exempt from the fee set forth in section 5324 of this chapter.

(d) Unauthorized practice. Nothing in this section is intended to prohibit prosecution of a person under 3 V.S.A. § 127 (unauthorized practice).

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2019, No. 30, § 28; 2019, No. 73, § 36.

SUBCHAPTER 2. ADMINISTRATION

§ 5321. Secretary of State's Office duties

The Office shall:

(1) provide general information to applicants for commissioning as a notary public;

(2) administer fees as provided under section 5324 of this chapter;

(3) explain appeal procedures to notaries public and applicants and explain complaint procedures to the public; and

(4) receive applications for commissioning, review applications, and grant and renew commissions when appropriate under this chapter.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5322. Advisor appointees

(a) The Secretary of State shall appoint two notaries public to serve as advisors in matters relating to notarial acts. One of the advisors shall be an attorney selected from a list of at least three licensed attorneys provided by the Vermont Bar Association. The advisors shall be appointed for staggered five-year terms and serve at the pleasure of the Secretary. One of the initial appointments shall be for less than a five-year term.

(b) Each appointee shall have at least three years of experience as a notary public during the period immediately preceding appointment and shall be actively commissioned in Vermont and remain in good standing during incumbency.

(c) The Office shall seek the advice of the advisor appointees in carrying out the provisions of this chapter. The appointees shall be entitled to compensation and reimbursement of expenses as set forth in 32 V.S.A. § 1010 for attendance at any meeting called by the Office for this purpose.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5323. Rules

(a) The Office, with the advice of the advisor appointees, may adopt rules to implement this

chapter. The rules may:

- (1) prescribe the manner of performing notarial acts regarding tangible and electronic records;
- (2) include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;
- (3) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;
- (4) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking the commission or special commission endorsement of or otherwise disciplining a notary public and ensuring the trustworthiness of an individual holding a commission or special commission endorsement as notary public;
- (5) include provisions to prevent fraud or mistake in the performance of notarial acts;
- (6) prescribe the means of performing a notarial act involving a remotely located individual using communication technology;
- (7) establish standards for communication technology and identity proofing;
- (8) establish standards and a period for the retention of an audiovisual recording created under section 5379 of this chapter; and
- (9) prescribe methods for a notary public to confirm, under subsections 5379(c) and (d) of this chapter, the identity of a tangible record.

(b) Rules adopted regarding the performance of notarial acts with respect to electronic records and remote online notarization may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. In adopting, amending, or repealing rules regarding notarial acts with respect to electronic records and remote online notarization, the Office shall consider, as far as is consistent with this chapter:

- (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 have laws substantially similar to this chapter; and
- (3) the views of governmental officials and entities and other interested persons.

(c) [Repealed.]

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.

§ 5324. Fees

(a) For the issuance of a commission as a notary public, the Office shall collect a fee of \$30.00.

(b) For issuance of a special endorsement authorizing the performance of electronic and remote notarial acts in accordance with subsection 5341(d) of this chapter, the Office shall collect a fee of \$30.00.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.

SUBCHAPTER 3. COMMISSIONS

§ 5341. Commission as notary public; qualifications; no immunity or benefit

(a) An individual qualified under subsection (b) of this section may apply to the Office for a commission as a notary public. The applicant shall comply with and provide the information

required by rules adopted by the Office and pay the application fee set forth in section 5324 of this chapter.

(b) An applicant for a commission as a notary public shall:

(1) be at least 18 years of age;

(2) be a citizen or permanent legal resident of the United States;

(3) be a resident of or have a place of employment or practice in this State;

(4) not be disqualified to receive a commission under section 5342 of this chapter; and

(5) pass a basic examination approved by the Office based on the statutes, rules, and ethics relevant to notarial acts.

(c) Before issuance of a commission as a notary public, an applicant for the commission shall execute an oath of office and submit it to the Office.

(d) A notary public shall not perform a notarial act on an electronic record or for a remotely located individual without obtaining a special endorsement from the Office. A notary public shall hold a notary public commission to be eligible for a special endorsement to perform notarial acts on electronic records and for remotely located individuals. The Office shall adopt rules for obtaining and regulating a special commission endorsement authorizing a notary public to perform notarial acts on electronic records and for remotely located individuals. These rules shall require notaries public performing notarial acts on electronic records and for remotely located individuals to ensure the communication technology and identity proofing used for the performance of the notarial act on electronic records or for remotely located individuals comply with the requirements of section 5380 of this chapter and any rules adopted by the Office in accordance with section 5323 of this chapter. A notary public shall apply for the special commission endorsement for the performance of notarial acts on electronic records and for remotely located individuals by filing with the Office an application provided by the Office accompanied by the required fees and evidence of eligibility, as required in rules adopted by the Office in accordance with section 5323 of this chapter.

(e) A commission to act as a notary public authorizes the notary public to perform notarial acts except for notarial acts on electronic records or for remotely located individuals. A commission with a special endorsement issued under subsection (d) of this section authorizes a notary public to perform notarial acts on electronic records and for remotely located individuals. The commission does not provide the notary public any immunity or benefit conferred by law of this State on public officials or employees.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.

§ 5342. Grounds to deny, refuse to renew, revoke, suspend, or condition commission of notary public

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

(1) failure to comply with this chapter;

(2) a fraudulent, dishonest, or deceitful misstatement or omission in the application for a commission as a notary public submitted to the Office;

(3) a conviction of the applicant or notary public of any felony or a crime involving fraud, dishonesty, or deceit;

(4) a finding against, or admission of liability by, the applicant or notary public in any legal proceeding or disciplinary action based on the applicant's or notary public's fraud, dishonesty, or

deceit;

(5) failure by the notary public to discharge any duty required of a notary public, whether by this chapter, rules of the Office, or any federal or State law;

(6) use of false or misleading advertising or representation by the notary public representing that the notary has a duty, right, or privilege that the notary does not have;

(7) violation by the notary public of a rule of the Office regarding a notary public;

(8) denial, refusal to renew, revocation, suspension, or conditioning of a notary public commission in another state; or

(9) committing any of the conduct set forth in 3 V.S.A. § 129a(a).

(b) If the Office denies, refuses to renew, revokes, suspends, or imposes conditions on a commission as a notary public, the applicant or notary public is entitled to timely notice and hearing in accordance with 3 V.S.A. chapter 25.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5343. Renewals; continuing education

(a) Biennially, the Office shall provide a renewal notice to each commissioned notary public. Upon receipt of a notary public's completed renewal, payment of the fee as set forth in section 5324 of this chapter, and evidence of eligibility, the Office shall issue to him or her a new commission.

[Subsection (b) effective February 1, 2021.]

(b) A notary public applying for renewal shall complete continuing education approved by the Office, which shall not be required to exceed two hours, during the preceding two-year period.

(c) The Office, with the advice of the advisor appointees, shall establish by rule guidelines and criteria for continuing education credit.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5344. Database of notaries public

The Office shall maintain an electronic database of notaries public:

(1) through which a person may verify the authority of a notary public to perform notarial acts; and

(2) that indicates whether a notary public has notified the Office that the notary public will be performing notarial acts on electronic records.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5345. Prohibitions; offenses

(a) A person shall not perform or attempt to perform a notarial act or hold himself or herself out as being able to do so in this State without first having been commissioned.

(b) A person shall not use in connection with the person's name any letters, words, or insignia indicating or implying that the person is a notary public unless commissioned in accordance with this chapter.

(c) A person shall not perform or attempt to perform a notarial act while his or her commission has been revoked or suspended.

(d) A person who violates a provision of this section shall be subject to a fine of not more

than \$5,000.00 or imprisonment for not more than one year, or both. Prosecution may occur upon the complaint of the Attorney General or a State's Attorney and shall not act as a bar to civil or administrative proceedings involving the same conduct.

(e) A commission as a notary public shall not authorize an individual to assist a person in drafting legal records, give legal advice, or otherwise practice law.

(f) Except as otherwise allowed by law, a notary public shall not withhold access to or possession of an original record provided by a person who seeks performance of a notarial act by the notary public.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

SUBCHAPTER 4. NOTARIAL ACTS

§ 5361. Notarial acts in this State; authority to perform

(a) A notarial act, as defined in subdivision 5304(10) of this chapter, may only be performed in this State by a notary public commissioned under this chapter.

(b) 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.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2019, No. 30, § 29; amended 2023, No. 77 § 11, eff. June 27, 2023.

§ 5362. Authorized notarial acts

(a) A notary public may perform a notarial act as authorized by and in accordance with the requirements of this chapter or otherwise by law of this State.

(b) A notary public shall not perform a notarial act with respect to a record to which the notary public or the notary public's spouse 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.

(c) A notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.

§ 5363. Requirements for certain notarial acts

(a) Acknowledgments. A notary public 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.

(b) Verifications. A notary public 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.

(c) Signatures. A notary public who 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.

(d) Protests. A notary public who makes or notes a protest of a negotiable instrument shall determine the matters set forth in 9A V.S.A. § 3-505(b), protest; certificate of dishonor.

(e) Copies. A notary public 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.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.

§ 5364. Personal appearance required

(a) 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 notary public.

(b) [Repealed.]

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.

§ 5365. Identification of individual

(a) Personal knowledge. A notary public 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.

(b) Satisfactory evidence. A notary public has satisfactory evidence of the identity of an individual appearing before the officer if the officer can identify the individual:

(1) by means of:

(A) a passport, driver's license, or government-issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act; or

(B) another form of government identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual, and is satisfactory to the officer; or

(2) 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, driver's license, or government-issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act.

(c) Additional information. A notary public may require an individual to provide additional information or identification credentials necessary to assure the notary public of the identity of the individual.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5366. 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 notary public to sign the individual's name on the record. The notary public shall insert "Signature affixed by (name of other individual) at the direction of (name of individual)" or words of similar import.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5367. Certificate of notarial act

(a) A notarial act shall be evidenced by a certificate. The certificate shall:

(1) be executed contemporaneously with the performance of the notarial act;

(2) be signed and dated by the notary public and be signed in the same manner as on file with

the Office;

- (3) identify the jurisdiction in which the notarial act is performed;
- (4) contain the title of office of the notary public; and
- (5) indicate the date of expiration of the officer's commission.

(b)

(1) If a notarial act regarding a tangible record is performed by a notary public, an official stamp shall be affixed to or embossed on the certificate or, in the alternative, the notary shall clearly print or type the notary public's name and commission number on the certificate.

(2) If a notarial act regarding an electronic record is performed by a notary public and the certificate contains the information specified in subdivisions (a)(2)-(4) of this section, an official stamp may be attached to or logically associated with the certificate.

(c) A certificate of a notarial act is sufficient if it meets the requirements of subsections (a) and (b) of this section and:

(1) is in a short form as set forth in section 5368 of this chapter;

(2) is in a form otherwise permitted by the law of this State;

(3) is in a form permitted by the law applicable in the jurisdiction in which the notarial act was performed; or

(4) sets forth the actions of the notary public and the actions are sufficient to meet the requirements of the notarial act as provided in sections 5362-5364 of this chapter or a law of this State other than this chapter.

(d) By executing a certificate of a notarial act, a notary public certifies that the notary public has complied with the requirements and made the determinations specified in sections 5363-5365 of this chapter.

(e) A notary public shall not affix the notary public's signature to, or logically associate it with, a certificate until the notarial act has been performed.

(f)

(1) If a notarial act is performed regarding a tangible record, a certificate shall be part of, or securely attached to, the record.

(2) If a notarial act is performed regarding an electronic record, the certificate shall be affixed to, or logically associated with, the electronic record.

(3) If the Office has established standards by rule pursuant to section 5323 of this chapter for attaching, affixing, or logically associating the certificate, the process shall conform to those standards.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5368. Short-form certificates

The following short-form certificates of notarial acts shall be sufficient for the purposes indicated, if completed with the information required by subsections 5367(a) and (b) of this chapter:

(1) For an acknowledgment in an individual capacity:

State of Vermont

[County] of

This record was acknowledged before me on _____ by _____.

Date

Name(s) of individual(s)

Signature of notary public

Stamp []

Title of office

[My commission expires: _____]

(2) For an acknowledgment in a representative capacity:

State of Vermont

[County] of

This record was acknowledged before me on _____ by _____.

Date

Name(s) of individual(s)

as _____ of _____

Type of authority, such as officer or trustee

Name of party on behalf of whom record

was executed).

Signature of notary public

Stamp []

Title of office

[My commission expires: _____]

(3) For a verification on oath or affirmation:

State of Vermont

[County] of

Signed and sworn to (or affirmed) before me on _____ by _____.

Date

Name(s) of individual(s)

making statement

Signature of notary public

Stamp []

Title of office

[My commission expires: _____]

(4) For attesting a signature:

State of Vermont

[County] of

Signed [or attested] before me on _____ by _____.

Date

Name(s) of individual(s)

Signature of notary public

Stamp []

Title of office

[My commission expires: _____]

(5) For certifying a copy of a record:

State of Vermont

[County] of

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

_____.

Dated _____

Signature of notary public

Stamp []

Title of office

[My commission expires: _____]

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.

§ 5369. Official stamp

The official stamp of a notary public shall:

(1) include the notary public’s name, jurisdiction, and other information required by the

Office; and

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

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5370. Stamping device

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

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

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5371. Notification regarding performance of notarial act on electronic record; selection of technology

(a) A notary public holding a special commission endorsement pursuant to subsection 5341(d) of this title and who is thus authorized to perform notarial acts on electronic records may select one or more tamper-evident technologies to perform notarial acts with respect to electronic records. A person shall 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.

(b) A recorder, as defined in 27 V.S.A. § 622, 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 notary public executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019; amended 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.

§ 5372. Authority to refuse to perform notarial act

(a) A notary public may refuse to perform a notarial act if the notary public is not satisfied that:

(1) the individual executing the record is competent or has the capacity to execute the record;

or

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

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

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5373. Validity of notarial acts

(a) Except as otherwise provided in subsection 5372(b) of this chapter, the failure of a notary public to perform a duty or meet a requirement specified in this chapter shall not impair the marketability of title or invalidate a notarial act or a certification evidencing the notarial act.

(b) An acknowledgment that contains a notary commission expiration date that is either inaccurate or expired shall not invalidate the acknowledgment if it can be established that on the date the acknowledgment was taken, the notary public's commission was active.

(c) The validity of a notarial act under this chapter shall 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.

(d) Defects in the written evidence of acknowledgment in a document in the public records may be cured by the notary public who performed the original notarial act. The notary public shall, under oath and before a different notary public, execute a writing correcting any defect. Upon recording, the corrective document corrects any deficiency and ratifies the original written evidence of acknowledgment as of the date the acknowledgment was originally taken.

(e) Notwithstanding any provision of law to the contrary, a document that conveys an interest in real property shall be recordable in the land records and, if recorded, shall be sufficient for record notice to third parties, notwithstanding the failure of a notary public to perform any duty or meet any requirement specified in this chapter. Such failure includes the failure to comply in full or in part with the requirements of sections 5367-5369 of this title.

(f) This section does not validate a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5374. Notarial act in another state

(a) A notarial act performed in another state has the same effect under the law of this State as if performed by a notary public of this State, if the act performed in that state is performed by:

- (1) a notary public of that state;
- (2) a judge, clerk, or deputy clerk of a court of that state; or
- (3) any other individual authorized by the law of that state to perform the notarial act.

(b) If a deed or other conveyance or a power of attorney for the conveyance of land, the acknowledgment or proof of which is taken out of State, is certified agreeably to the laws of the state in which the acknowledgment or proof is taken, it shall be valid as though it were taken before a proper officer in this State.

(c) An acknowledgment for a deed or other conveyance or a power of attorney for the conveyance of land that is taken out of State before a proper officer of this State shall be valid as if taken within this State.

(d) 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.

(e) The signature and title of a notarial officer described in subdivision (a)(1) or (2) of this section conclusively establish the authority of the officer to perform the notarial act.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5375. Notarial act under authority of federally recognized Indian tribe

(a) 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 notary public of this State, if the act performed in the jurisdiction of the tribe is performed by:

- (1) a notary public of the tribe;
- (2) a judge, clerk, or deputy clerk of a court of the tribe; or
- (3) any other individual authorized by the law of the tribe to perform the notarial act.

(b) 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.

(c) The signature and title of a notarial officer described in subdivision (a)(1) or (2) of this section conclusively establish the authority of the officer to perform the notarial act.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5376. Notarial act under federal authority

(a) A notarial act performed under federal law has the same effect under the law of this State as if performed by a notary public of this State, if the act performed under federal law is performed by:

(1) a judge, clerk, or deputy clerk of a court;

(2) an individual in military service or performing duties under the authority of military service who is authorized to perform notarial acts under federal law;

(3) an individual designated a notarizing officer by the U.S. Department of State for performing notarial acts overseas; or

(4) any other individual authorized by federal law to perform the notarial act.

(b) 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.

(c) The signature and title of an officer described in subdivision (a)(1), (2), or (3) of this section shall conclusively establish the authority of the officer to perform the notarial act.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5377. Evidence of authenticity of notarial act performed in this State

(a) The authenticity of the official notarial stamp and signature of a notary public may be evidenced by either:

(1) A certificate of authority from the Secretary of State authenticated as necessary.

(2) An apostille from the Secretary of State in the form prescribed by the Hague convention of October 5, 1961 abolishing the requirement of legalization of foreign public documents.

(b) An apostille as specified by the Hague convention shall be attached to any document that requires authentication and that is sent to a nation that has signed and ratified this convention.

History

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5378. Foreign notarial act

(a) In this section, “foreign state” means a government other than the United States, a state, or a federally recognized Indian tribe.

(b) 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 notary public of this State.

(c) If the title of office and indication of authority to perform notarial acts in a foreign state appears 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.

(d) The signature and official stamp of an individual holding an office described in

subsection (c) of this section are prima facie evidence that the signature is genuine and the individual holds the designated title.

(e) 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.

(f) A consular authentication issued by an individual designated by the U.S. 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

Added 2017, No. 160 (Adj. Sess.), § 1, eff. July 1, 2019.

§ 5379. Notarial act performed for remotely located individual

(a) A remotely located individual may comply with section 5364 of this chapter by using communication technology to appear before a notary public with a special commission endorsement.

(b) A notary public located in this State may perform a notarial act using communication technology for a remotely located individual if:

(1) the notary public holds a special commission endorsement pursuant to subsection 5341(d) of this title;

(2) the notary public:

(A) has personal knowledge under subsection 5365(a) of this chapter of the identity of the individual;

(B) has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under subsection 5365(b) of this chapter; or

(C) has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

(3) the notary public is reasonably able 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;

(4) the notary public, or a person acting on behalf of the notary public, creates an audiovisual recording of the performance of the notarial act; and

(5) for a remotely located individual located outside the United States:

(A) the record:

(i) 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

(ii) involves property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and

(B) 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.

(c) A notary public in this State may use communication technology under subsection (b) of this section to take an acknowledgement of a signature on a tangible record physically present before the notary public if the record is displayed to and identified by the remotely located individual during the audiovisual recording under subdivision (b)(4) of this section.

(d) The requirement under subdivision (b)(3) of this section for the performance of a notarial act with respect to a tangible record not physically present before the notary public is satisfied if:

(1) the remotely located individual:

(A) during the audiovisual recording under subdivision (b)(4) of this section, signs:

(i) the record; and

(ii) a declaration, in substantially the following form, that is part of or securely attached to the record:

I declare under penalty of perjury that the record of which this declaration is part or to which it is attached is the same record on which (name of notary public), a notary public, performed a notarial act and before whom I appeared by means of communication technology on _____ (date).

Signature of remotely located individual

Printed name of remotely located individual _____; and

(B) sends the record and declaration to the notary public not later than three days after the notarial act was performed; and

(2) the notary public:

(A) in the audiovisual recording under subdivision (b)(4) of this section, records the individual signing the record and declaration; and

(B) after receipt of the record and declaration from the individual, executes a certificate of notarial act under section 5367 of this chapter, which must include a statement in substantially the following form:

I, (name of notary public), witnessed, by means of communication technology, (name of remotely located individual) sign the attached record and declaration on (date).

(e) A notarial act performed in compliance with subsection (d) of this section complies with subdivision 5367(a)(1) of this chapter and is effective on the date the remotely located individual signed the declaration under subdivision (d)(1)(A)(ii) of this section.

(f) Subsection (d) of this section does not preclude use of another procedure to satisfy subdivision (b)(3) of this section for a notarial act performed with respect to a tangible record.

(g) A notary public located in this State may use communication technology under subsection (b) of this section to administer an oath or affirmation to a remotely located individual if, except as otherwise provided by other law of this State, the notary public:

(1) identifies the individual under subdivision (b)(2) of this section;

(2) creates or causes the creation under subdivision (b)(4) of this section of an audiovisual recording of the individual taking the oath or affirmation; and

(3) retains or causes the retention under subsection (k) of this section of the recording.

(h) The notary public shall ensure that the communication technology and identity proofing used to perform a notarial act for a remotely located individual complies with section 5380 of this chapter and any standards adopted by the Office in accordance with section 5323 of this chapter.

(i) If a notarial act is performed under this section, the certificate of notarial act required by section 5367 of this chapter and the short-form certificate provided in section 5368 of this chapter must indicate that the notarial act was performed using communication technology.

(j) A short-form certificate provided in section 5368 of this chapter for a notarial act subject to this section is sufficient if it:

(1) complies with rules adopted under section 5323 of this chapter; or

(2) is in the form provided in section 5367 of this chapter and contains a statement substantially as follows: "This notarial act involved the use of communication technology."

(k) A notary public, guardian, conservator, or agent of a notary public or a personal representative of a deceased notary public shall retain the audiovisual recording created under

subdivision (b)(4) of this section 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 rules adopted under section 5323 of this chapter, the recording must be retained for a period of at least 10 years after the recording is made.

(1) Providers of the communication technologies, identity proofing, or storage must be registered with the Secretary of State to do business in Vermont and, by allowing communication technology or identity proofing to facilitate a notarial act of an electronic record or for a remotely located individual or by providing storage of the audiovisual recording under subdivision (b)(3) of this section, providers of the communication technology, identity proofing, or storage consent and agree that the service or process being provided is in compliance with the requirements set forth in this chapter and with any rules adopted by the Office.

History

Added 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.

§ 5380. Computer technology and identity proofing providers; minimum standards

(a) Communication technology and identity proofing providers shall develop, maintain, and implement processes and services that are consistent with the requirements of this chapter and industry standards and best practices for the process or service provided. Providers must also comply with all applicable federal and State regulations, rules, and standards, including:

(1) with respect to communication technology, regulations, rules, and standards specific to simultaneous communication by sight and sound and information and communication technology for individuals with physical, sensory, and cognitive disabilities; and

(2) with respect to identity proofing, regulations, rules, and standards specific to the enrollment and verification of an identity used in digital authentication.

(b) A provider of communication technology or identity proofing shall provide evidence to the notary public's satisfaction of the provider's ability to satisfy the requirements of this chapter for the service or process being provided.

History

Added 2021, No. 171 (Adj. Sess.), § 5, eff. July 1, 2022.

TITLE 27. PROPERTY

CHAPTER 5. CONVEYANCE OF REAL ESTATE

SUBCHAPTER 1. MANNER OF CONVEYING INTERESTS IN OR AFFECTING REALTY

§ 305. Conveyances effected through power of attorney

(a) A deed or other conveyance of lands or of an estate or interest therein, made by virtue of a power of attorney, shall not be of any effect or admissible in evidence, unless the power of attorney is signed, witnessed by one or more witnesses, acknowledged, and recorded in the office where the deed is required to be recorded.

(b) Nothing in subsection (a) of this section shall limit the enforceability of a power of attorney which is executed in another state or jurisdiction in compliance with the law of that state or jurisdiction. This subsection shall apply retroactively, except that it shall not affect a suit begun or pending as of July 1, 2010.

History

Amended 1973, No. 211 (Adj. Sess.); 1995, No. 6, § 1, eff. March 15, 1995; 2009, No. 132 (Adj. Sess.), § 6, eff. May 29, 2010; 2023, No. 6, § 322, eff. July 1, 2023.

SUBCHAPTER 2. EXECUTION OF ACKNOWLEDGMENTS
ARTICLE 1. REQUIREMENTS

§ 341. Requirements generally; recording

(a) Deeds and other conveyances of lands, or of an estate or interest in land, shall be signed by the party granting the same and acknowledged by the grantor before a notary public and recorded at length in the clerk's office of the town in which the lands lie. The acknowledgment before a notary public shall be valid without an official stamp being affixed to the notary's signature.

(b)

(1) A deed or other conveyance of land that includes a reference to a survey prepared or revised after July 1, 1988 may be recorded only if it is accompanied by the survey to which it refers, or cites the volume and page in the land records showing where the survey has previously been recorded.

(2) If the conveyance of land results in the subdivision of a parcel or a change in the boundaries of a parcel after January 1, 2020, the deed shall:

(A) be accompanied by a survey plat that depicts the new parcel boundaries; or

(B) cite the volume and page in the land records that indicates where the new parcel boundaries have previously been recorded.

(3) The failure to comply with this subsection shall not:

(A) void or invalidate the deed or other instruments recorded; or

(B) render the title to the property depicted in the survey plat unmarketable.

(c) A lease of real property that has a term of more than one year from the making of the lease need not be recorded at length if a notice or memorandum of lease, which is executed and acknowledged as provided in subsection (a) of this section, is recorded in the land records of the town in which the leased property is situated. The notice of lease shall contain at least the following information:

(1) the names of the parties to the lease as set forth in the lease;

(2) a statement of the rights of a party to extend or renew the lease;

(3) any addresses set forth in the lease as those of the parties;

(4) the date of the execution of the lease;

(5) the term of the lease, the date of commencement, and the date of termination;

(6) a description of the real property as set forth in the lease;

(7) a statement of the rights of a party to purchase the real property or exercise a right of first refusal with respect thereto;

(8) a statement of any restrictions on assignment of the lease; and

(9) the location of an original lease.

(d)

(1) A deed or other instrument may be recorded in the land records pursuant to this section for the purposes provided in this chapter and shall be deemed to impart notice of its contents if it is signed and acknowledged in accordance with the procedures specified in the Emergency Administrative Rules for Remote Notarial Acts adopted by the Vermont Secretary of State (the Emergency Rules) during the period that the Emergency Rules are in effect.

(2) A deed or other instrument executed in compliance with the Emergency Rules shall be presumed to be valid if the notarial certificate attached to the deed or other instrument contains an affirmative statement of compliance with the Emergency Rules.

History

Amended 1967, No. 231 (Adj. Sess.), § 1, eff. Jan. 24, 1968; 1973, No. 249 (Adj. Sess.), § 84, eff. April 9, 1974; 1987, No. 220 (Adj. Sess.); 1993, No. 174 (Adj. Sess.), § 1; 1997, No. 86 (Adj. Sess.), § 1; 2003, No. 150 (Adj. Sess.), § 5; 2017, No. 24, § 3, eff. May 4, 2017; 2017, No. 28, § 5, eff. May 10, 2017; 2017, No. 160 (Adj. Sess.), § 2, eff. July 1, 2019; 2019, No. 38, § 5, eff. Jan. 1, 2020; 2019, No. 95 (Adj. Sess.), § 3, eff. April 28, 2020; 2023, No. 6, § 323, eff. July 1, 2023.

§ 342. Acknowledgment and recording required

A deed of bargain and sale, a mortgage or other conveyance of land in fee simple or for term of life, or a lease for more than one year from the making thereof shall not be effectual to hold such lands against any person but the grantor and his or her heirs, unless the deed or other conveyance is acknowledged and recorded.

History

Amended 2017, No. 160 (Adj. Sess.), § 3, eff. July 1, 2019.

§ 348. Instruments concerning real property lacking statement of consideration, or witnesses or acknowledgments, validated

(a) When an instrument of writing shall have been on record in the office of the clerk in the proper town for a period of 15 years, and there is a defect in the instrument because it omitted to state any consideration or was not sealed, witnessed, acknowledged, validly acknowledged, or because a license to sell was not issued or is defective, the instrument shall, from and after the expiration of 15 years from the filing thereof for record, be valid. Nothing in this section shall be construed to affect any rights acquired by grantees, assignees or encumbrancers under the instruments described in the preceding sentence, nor shall this section apply to conveyances or other instruments of writing, the validity of which is brought in question in any suit now pending in any courts of the State.

(b) Notwithstanding subsection (a) of this section, any deed, mortgage, lease, power of attorney, release, discharge, assignment, or other instrument made for the purpose of conveying, leasing, mortgaging, or affecting any interest in real property that contains any one or more of the following errors is valid unless, within three years after the instrument is recorded, an action challenging its validity is commenced, and a copy of the complaint is recorded in the land records of the town where the instrument is recorded:

(1) The instrument contains a defective acknowledgment.

(2) In the case of a conveyance by a corporation, limited liability company, partnership, limited partnership, or limited liability partnership, or by any other entity authorized to hold and convey title to real property within this State, the instrument designated such entity as the grantor but was signed or acknowledged by an individual in the individual capacity of such person, or fails to disclose the authority of the individual who executes and acknowledges the instrument.

(3) The instrument contains an incorrect statement of the date of execution, or contains an execution date, or other date that is later than the date of the recording. In case of such conflict, the date of recording prevails.

(4) The instrument does not contain a statement of consideration.

(5) The acknowledgement clause of an instrument executed by an attorney-in-fact inaccurately recites the personal appearance of the principal and not the attorney-in-fact who personally appeared on behalf of the principal.

(c) Notwithstanding the provisions of subsection (a) of this section, any deed, mortgage, lease, power of attorney, release, discharge, assignment, or other instrument made for the purpose of conveying, leasing, mortgaging, or affecting any interest in real property that is executed pursuant to a recorded power of attorney and contains one or more of the following

errors or omissions is valid as if it had been executed without the error or omission:

(1) The instrument was executed by an attorney-in-fact but was signed or acknowledged by the attorney-in-fact without reference to his or her capacity.

(2) The instrument was executed by an attorney-in-fact but does not reference the power of attorney.

(3) The power of attorney was effective at the time the instrument was executed but is recorded after the instrument is recorded.

(d) A release, discharge, or assignment of mortgage interest executed by a commercial lender with respect to a one- to four-family residential real property, including a residential unit in a condominium or in a common interest community as defined in Title 27A, that recites authority to act on behalf of the record holder of the mortgage under a power of attorney but where the power of attorney is not of record, shall have the same effect as if executed by the record holder of the mortgage unless, within three years after the instrument is recorded, an action challenging the release, discharge, or assignment is commenced and a copy of the complaint is recorded in the land records of the town where the release, discharge, or assignment is recorded. This subsection shall not apply to releases, discharges, or assignments obtained by fraud or forgery.

(e) A power of attorney made for the purpose of conveying, leasing, mortgaging, or affecting any interest in real property that has been acknowledged and signed in the presence of at least one witness shall be valid, notwithstanding its failure to comply with 14 V.S.A. § 3503 or the requirements of the Emergency Administrative Rules for Remote Notarial Acts adopted by the Vermont Secretary of State, unless within three years after recording, an action challenging its validity is commenced and a copy of the complaint is recorded in the land records of the town where the power of attorney is recorded. This subsection shall not apply to a power of attorney obtained by fraud or forgery.

History

Added 1977, No. 79, § 1, eff. April 27, 1977; amended 2007, No. 177 (Adj. Sess.), § 2; 2009, No. 132 (Adj. Sess.), § 7, eff. May 29, 2010; 2021, No. 19, § 1, eff. May 6, 2021; 2023, No. 6, § 325, eff. July 1, 2023.

ARTICLE 2. PROCEEDINGS UPON FAILURE OF GRANTOR TO ACKNOWLEDGE

§ 371. Proving execution when grantor dies or leaves state

When a grantor or lessor dies or leaves the State without acknowledging the grantor's or lessor's deed, the execution of the deed may be proved by the testimony of a subscribing witness before a Justice of the Supreme Court or a Superior Judge. If all the subscribing witnesses to the deed are dead or out of the State, the execution of the deed may be proved before the Supreme or Superior Court by proving the handwriting of the grantor or lessor and of a subscribing witness or adducing other evidence to the satisfaction of the court. Such evidence entered on the deed or annexed thereto shall be equivalent to the grantor's or lessor's acknowledgment of the deed.

History

Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974; 2023, No. 6, § 326, eff. July 1, 2023.

§ 372. Proceedings when grantor refuses to acknowledge-Summons

When a grantor or lessor refuses to acknowledge the grantor's or lessor's deed, the grantee or lessee, or a person claiming under the grantee or lessee, may apply to a Superior Judge who shall issue a summons to the grantor or lessor to appear at a certain time and place before the judge to hear the testimony of the subscribing witnesses to the deed. The summons, with a copy of the deed annexed thereto, shall be served like a writ of summons, at least seven business days before the time assigned in the summons for proving the deed.

History

Amended 1973, No. 249 (Adj. Sess.), § 85, eff. April 9, 1974; 2017, No. 11, § 55; 2023, No. 6, § 327, eff. July 1, 2023.

§ 373. Notice

When the summons is served by leaving a copy at the usual place of abode of the grantor or lessor, and it does not appear that actual notice was given, the judge shall continue the hearing from time to time, not exceeding 90 days, and direct that actual notice be given if the party resides in the State. When such notice cannot be given, the judge shall proceed in the examination as provided in section 374 of this title, and the judge's certificate of the execution of the deed shall have the same effect as provided in that section.

History

Amended 1973, No. 249 (Adj. Sess.), § 86, eff. April 9, 1974; 2023, No. 6, § 328, eff. July 1, 2023.

§ 374. Hearing and certificate

When it appears from the officer's return that a copy of such summons was delivered to the grantor or lessor, the judge may take evidence of one or more of the subscribing witnesses to the execution of such deed, at the time designated for hearing or at an adjournment thereof. If such execution is proved to the satisfaction of the judge, he shall certify the same thereon and in his certificate shall note the presence or absence of the grantor or lessor and such certificate shall be equivalent to the acknowledgment of the grantor or lessor.

History

Amended 1973, No. 249 (Adj. Sess.), § 87, eff. April 9, 1974.

§ 375. Witnesses dead or out of state

When a grantor or lessor refuses to acknowledge his deed and the subscribing witnesses to the same are dead or out of the state, it may be proved before the supreme or any superior court by proving the handwriting of the grantor or lessor and of a subscribing witness, such court first summoning the grantor or lessor as provided in this chapter.

History

Amended 1973, No. 193 (Adj. Sess.), § 3, eff. April 9, 1974.

§ 378. Effect of recording unacknowledged deed

A person interested in a deed or lease not acknowledged may cause the deed or lease to be recorded without acknowledgment before or during the application to the court, or the proceedings before any of the authorities named in sections 371-376 of this title; and, when so recorded in the proper office, it shall be as effectual as though the same had been duly acknowledged and recorded for 60 days thereafter. If such proceedings for proving the execution of the deed are pending at the expiration of such 60 days, the effect of such record shall continue until the expiration of six business days after the termination of the proceedings.

History

Amended 2017, No. 11, § 56.

SUBCHAPTER 8. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT

§ 623. Validity of electronic documents

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium, or be in writing, the requirement is satisfied by an electronic document satisfying this subchapter.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature.

History

Added 2021, No. 171 (Adj. Sess.), § 2, eff. July 1, 2022.

EMERGENCY RULES FOR REMOTE AND ELECTRONIC NOTARIAL ACTS

Part 1: Scope

1-1 Personal Appearance.

- a. If a notarial act relates to a statement made in or a signature executed on a record, 26 V.S.A. § 5364(a) requires the individual making the statement or executing the signature to appear personally before the notary public performing the notarial act.
- b. Pursuant to these rules, the requirement for a personal appearance is satisfied if the notary public and the person executing the signature are in the same physical place or the person, if remotely located, is using communication technology, as defined in 26 V.S.A. § 5304(4), to appear before the notary public using the protocols and standards prescribed in this rule.

1-2 Temporary Waiver of Statute.

- a. The requirement in 26 V.S.A. § 5379(a) for a remotely located individual to appear before a notary public with a special endorsement from the Office to perform a notarial act for a remotely located individual is waived until the expiration of these emergency rules.
- b. The requirements in 26 V.S.A. §§ 5341(d) and (e) and 26 V.S.A. § 5379(b) that a notary public shall obtain a special endorsement from the Office to perform a notarial act for a remotely located individual is waived until the expiration of these emergency rules.
- c. These rules do not waive the requirement that a notary public hold a special endorsement to perform notarial acts on electronic records. The performance of notarial acts on an electronic record is prohibited unless the notary public holds a special endorsement issued by the Office in accordance with these Emergency Rules.
- d. All other provisions of the Vermont Uniform Act on Notarial Acts, as set forth in 26 V.S.A. Chapter 103 apply.

Part 2: Definitions

The definitions in 26 V.S.A. Chapter 103, Notaries Public, are incorporated into these rules.

“**Act**” means the Vermont Uniform Law on Notarial Acts, 26 V.S.A. Chapter 103.

“**Communication technology**” means an electronic device or process operating in accordance

with 26 V.S.A. § 5380 and in compliance with Part 5 of these Rules.

“Digital Certificate” means the digital certificate obtained from a third party that verifies the identity of the notary public and, after being applied to an electronic record, makes any changes to the electronic record tamper-evident.

“Director” means the Director of the Vermont Office of Professional Regulation.

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

“Electronic notarial act” means a notarial act by a notary public, physically present in the state of Vermont, on or involving an electronic record.

“Electronic notarial certificate” means the portion of a notarized electronic record that is completed by a notary public evidencing the notarial act and that includes the information required under 26 V.S.A. §§ 5367 and 5379.

“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.

“Electronic record” means information that is stored in an electronic form and is retrievable in perceivable form.

“Notarial Certificate” means the writing that evidences the completion of a notarial act and contains the information required in 26 V.S.A. §§ 5367 and 5380.

“Notary public” means a person holding a current notary public commission issued by the Office authorizing the performance of a notarial act.

“Office” means the Vermont Office of Professional Regulation.

“Remotely Located Individual” means an individual or individuals located in Vermont who are not in the physical presence of the notary public who perform(s) a notarial act.

“Remote Notarial Acts” means a notarial act performed at the request of a remotely located individual using communication technology, as defined in 26 V.S.A. § 5304(4), with respect to a tangible or electronic record that a notary public 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, attesting a signature, and noting a protest of a negotiable instrument.

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

“Signer” means the individual making the statement or executing the signature for which the notary public must perform the notarial act.

“**Tamper-evident**” means that any change to an electronic record after the performance of the notarial act is detectable.

Part 3. Administration

3-1 Applicable Law. Notaries public are regulated by the State of Vermont pursuant to 26 V.S.A. Chapter 103. These emergency rules are issued to clarify requirements for personal appearance before a notary, as set forth in 26 V.S.A. § 5364. This emergency rule is issued in accordance with 3 V.S.A § 844. Copies of these and other statutes are available online on the Office’s website. The Director regulates notaries public in conformity with these and other Vermont laws, to include the Administrative Procedures Act, 3 V.S.A. § 800 et seq.; the Public Records Act, 1 V.S.A. § 315 et seq.; and the Laws of Professional Regulation, 3 V.S.A. § 121 et seq.

3-2 Resources for Applicants and Registrants. The Office maintains a website with information and links relevant to all licensed professionals. Information specific to notaries public, including links to forms and online applications, is available.

Part 4: Remote Notarial Acts

4-1 Personal Appearance. Remote Notarial Acts performed in accordance with these rules fulfill the personal appearance requirements set forth in 26 V.S.A. § 5364.

4-2 Performance of Remote Notarial Acts. Notaries public holding a commission in Vermont may perform a Remote Notarial Act only while physically located in Vermont and only if

- (a) The notary public:
 - a. has personal knowledge of the identity of the individual;
 - b. has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notarial officer; or
 - c. has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identification.
- (b) The notary public is able reasonably to confirm that the tangible or electronic record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;
- (c) The notarial act is performed
 - a. on a tangible record submitted to the notary public in its original paper format by the remotely located individual;
 - b. on a record transmitted electronically to the notary public by the remotely located individual and printed by the notary public prior to the notarial act being evidenced by a certificate; or
 - c. on an electronic record in accordance with Part 6 of these rules.
- (d) The document presented to or signed before the notary public meets the definition of “original” in the Vermont Rules of Evidence.
- (e) The notary public or their designee creates an audio-visual recording of the performance of the notarial act, to be retained for at least 7 years;
- (f) The Remote Notarial Act complies with all other requirements for notarial acts set forth in the Act and these rules.
- (g) A notarial certificate or an electronic notarial certificate is affixed to or logically

associated with the tangible or electronic record, and includes the certificate language required under 26 V.S.A. §§ 5367 and 5380 and these Rules.

4-3 Notarial Certificates and Electronic Notarial Certificates. Remote Notarial Acts shall be evidenced by a notarial certificate or an electronic notarial certificate. The notarial certificate and electronic notarial certificates shall

- (a) contain the information required under 26 V.S.A. §§ 5367 and 5380 and these Rules;
- (b) a statement that the notarial act was performed remotely; and
- (c) a statement that the notarial act involved the use of communication technology.

Part 5. Electronic Notary Special Endorsement

5-1 Endorsement required. A notary public must obtain an electronic notary special endorsement in order to perform notarial acts on electronic records, whether in the presence of the individual or for a remotely located individual.

5-2 Eligibility. To be eligible for the electronic-records special endorsement, a notary public shall:

- (a) hold a current notary public commission in good standing;
- (b) attest to selecting and using communication and tamper-evident technology that complies with requirements herein; and
- (c) pay all required application fees.

5-3 Renewal. A notary public shall renew the electronic notary special endorsement commission every two years at the same time the notary public renews their notary public commission.

Part 6. Performing Notarial Acts on Electronic Records

6-1 Performance of Notarial Acts on Electronic Records

- (a) A notary public performing a notarial act on an electronic record shall be physically located in the State of Vermont at the time the notarial act is performed.
- (b) **Tamper-Evident Technology.** A notary public shall select one or more tamper-evident technologies that conform with the requirements of Part 6-2, herein, to perform electronic notarial acts.
- (c) Personal Appearance.
 - a. A notary public holding an electronic notary special endorsement may perform authorized notarial acts relating to electronic records only if the individual personally appears before the notary public at the time of the notarial act in accordance with 26 V.S.A. § 5364 or, if performing a notarial act for a remotely located individual, in accordance with Part 4 of these Rules.
- (d) Identification of Individual.
 - a. A notary public authorized to perform notarial acts on an electronic record shall verify the identity of the individual prior to performing a notarial act in accordance with 26 V.S.A. § 5365 and, if performing the notarial act for a remotely located individual, in accordance with Part 4, herein.
 - b. A notary public shall not base identification of an individual solely on familiarity with an individual's signature or an electronic verification process that authenticates

- the individual's electronic signature.
- (e) Electronic Notarial Certificate. The notarial act shall be evidenced by an electronic notarial certificate which
 - a. Shall be affixed to or logically associated with the electronic record; and
 - b. Shall contain the information required under 26 V.S.A. §§ 5367 and 5380.
 - (f) Electronic Signature.
 - a. A notary public performing a notarial act on an electronic record shall affix to or logically associate with the electronic notarial certificate the notary public's electronic signature and electronic official stamp, if using, by use of a digital certificate.

6-2 Tamper-Evident Technology.

- (a) A notary public shall select one or more tamper-evident technologies to perform notarial acts on electronic records. A person may not require a notary public to use a technology that the notarial officer has not selected.
- (b) The tamper-evident technology must be capable of
 - a. Affixing or attaching the notary public's electronic signature to the electronic record in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic record evident; and
 - b. Utilizing a valid digital certificate issued by a third-party provider. A notary public shall not perform a notarial act with respect to an electronic record if the digital certificate:
 - i. has expired;
 - ii. has been revoked or terminated by the issuing or registering authority;
 - iii. is invalid; or
 - iv. is incapable of authentication.

6-3 Reliability and Confidentiality.

- (a) A notary public authorized to perform electronic notarial acts shall use the same electronic signature and electronic official stamp, if using, for all electronic notarial acts.
 - a. The notary public shall submit to the Office a copy of the notary public's electronic signature and electronic official stamp, if using.
 - b. The notary public's electronic signature and electronic official stamp, if using, shall be unique to the notary public.
- (b) A notary public's electronic signature and electronic official stamp, if using, shall be retained under the notary public's sole control and access. A notary public shall not allow any other individual to use the notary public's electronic signature or electronic official stamp, if using.
 - a. A notary public's employer must not permit the use of a notary public's electronic signature or electronic official stamp, if using, by anyone except the notary public.
- (c) A notary public shall not disclose any access information used to affix the notary public's electronic signature or the electronic image of the notary public's official stamp, if using, except when requested by the Office or a designee, a judicial subpoena, and, with precautions, electronic document preparation and transmission vendors.
 - a. Control of security aspects, such as, but not limited to, passwords, token devices, biometrics, PINS, phrases, software on protected hardware shall remain under the sole control of the notary public.

- (d) Upon resignation, revocation, or expiration of the notary public’s commission or the notary public’s electronic notary specialty endorsement, the notary public shall destroy and disable their electronic signature and electronic official stamp, if using, including any coding, disk, digital certificate, card, software or password that enables the notary public to attach or logically associate the electronic signature or electronic official stamp, if using, to the electronic record, so as to prohibit the use of the electronic signature or electronic official stamp by any other person.
- (e) A notary public shall immediately notify the Office of the theft of the notary public’s electronic signature, electronic official stamp, if using, or digital certificate.

Part 7: Effective Dates; Expiration

All parts of these Emergency Rules shall take effect when filed with the Secretary of State in accordance with the Administrative Procedures Act, 3 V.S.A. § 800 et seq and shall remain in effect for 180 days thereafter, except for Part 4 of these Rules which shall take effect on March 23 and remain in effect for 180 days thereafter.

ADMINISTRATIVE RULES FOR NOTARY PUBLIC CONTINUING EDUCATION

Part 1: Definitions

- 1-1 **“Commission”** means a notary public commission issued by the Vermont Office of Professional Regulation.
- 1-2 **“Director”** means the Director of the Office of Professional Regulation.
- 1-3 **“Office”** means the Office of Professional Regulation.

Part 2: Administration

- 2-1 **Applicable Laws.** 26 V.S.A. § 5343(b) requires notaries public applying for renewal of a Vermont Commission to complete continuing education approved by the Office during the two-year period preceding application for renewal of the Commission. Per 26 V.S.A. § 5343(c), the Office shall establish by rule the guidelines and criteria for obtaining continuing education credit.
- 2-2 **Waiver or Variance.** The Director will not grant routine waivers or variances from any provisions of these rules without amending the rules. See 3 V.S.A. § 845. Where, in extraordinary circumstances, application of a rule would result in manifest unfairness, an absurd result, unjustifiable inefficiency, or an outcome otherwise inimical to the public health, safety, and welfare, the Director may, upon written request of an interested party, so find, grant a waiver with or without particular conditions and limitations, and record the action and justification in a written memorandum. This rule shall not be construed as creating any hearing right or cause of action.

Part 3: Commission Renewal Requirement

- 3-1 **Hours of Continuing Education.**
 - a. As a condition of Commission renewal, notaries public shall complete no fewer than one

hour of continuing education over the two-year period preceding the application for renewal.

- b. One hour is defined as 60 minutes.

3-2 **Documentation.**

- a. Documentation of successful completion of continuing education must be included in a notary public's application for renewal of a Commission.
- b. Documentation of continuing education must include sufficient information to indicate the notary public's successful completion of a course that complies with these Rules, such as the name and date of the course, proof of attendance, and the number of continuing education credit hours awarded.

3-3 **New Commission Holders.**

- a. Commissions are valid for fixed, two-year biennial periods and shall expire if not renewed before the end of each biennial period. Expiration dates are printed on Commission. A lookup tool on the Office website may be considered a primary source verification as to the license status and expiration date of all Office licensees.
- b. Commission holders are required to complete one hour of continuing education prior to the first renewal of a Commission after a full, two-year biennial period.
 - i. The continuing education requirement is not mandatory for an initial renewal of the Commission if the notary public has held the Commission for less than two years. In turn, Commission holders who first obtain a Commission during a two-year biennium period do not need to complete one hour of continuing education before the first renewal of the Commission.
- c. If an initial Commission is issued fewer than 90 days prior to the beginning of a two-year biennial Commission period.
 - i. The Commission holder does not need to renew the Commission at the beginning of that biennial period.
 - ii. The Commission shall be valid through the end of that next two-year biennial period.
 - iii. The Commission holder is required to complete one hour of continuing education during that two-year biennial period and show compliance with the continuing education requirements when renewing the Commission at the end of that two-year biennial period.

Part 4: Continuing Education Course

- 4-1 **Content.** The content of a continuing education course being used by a notary public as a basis for renewal of a Commission shall be directly related to the maintenance and enhancement of the skill, knowledge, and competency to perform notarial acts in accordance with Vermont's laws and requirements.

4-2 **Form.**

- a. A continuing education course shall be at least one hour in length.
- b. The continuing education course may be synchronous or asynchronous, recorded or live, or in-person or remote. The course may be interactive but does not have to be.
- c. A continuing education course must include both audio and visual content.

4-3 **Approval of Courses.**

- a. Continuing education courses that fulfill the requirements for Rules 4-1 and 4-2 and that are provided or approved by the following organizations are approved without prior review by or approval from the Office: American Bar Association, Vermont Bar

Association, and any Vermont State government agency.

- b. Except for those courses offered by an organization listed in Rule 4-3(a), continuing education course providers shall not advertise or hold out a course as approved for continuing education credit in Vermont unless the Director has approved the course as satisfying the requirements of these Rules. Course providers must apply to the Director for approval of the continuing education course through the Office's online portal.

4-4 **Acceptable Hours.** Continuing education credit will be granted only for the actual time a notary public spends as a learner during the course. Breaks, business meetings, and lunches are not to be counted toward continuing education credits.

4-5 **Continuing Education Audits.**

- a. The Office shall conduct continuing education audits of randomly selected Commission holders, including Commission holders whose Commissions are conditioned. The Office may also audit reinstating Commission holders, and Commission holders who, in any of the preceding two renewal cycles, were initially found to have not met continuing education renewal requirements.
- b. When a Commission holder appears on the audit list, the Office shall review the documentation provided by the Commission holder as part of the renewal application to determine whether the continuing education requirements have been satisfied. The Office may also request additional documentation and information from the Commission holder showing a detailed account of the credits claimed.
- c. Under 3 V.S.A. § 129(k), the Office may give Commission holders ninety (90) days to develop and complete a corrective action plan to cure any deficiencies in continuing education requirements. Courses taken pursuant to a corrective action plan may be counted for only the Commission period being audited. Failure to comply with a corrective action plan may result in disciplinary action per 3 V.S.A. § 129a(a)(4).