

TITLE 75 SECRETARY OF STATE

Final Rule

LSA Document #19-329

DIGEST

Adds 75 IAC 7 concerning office procedures and remote notary public authorizations. Effective March 31, 2020.

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

75 IAC 7

SECTION 1. 75 IAC 7 IS ADDED TO READ AS FOLLOWS:

ARTICLE 7. NOTARY PUBLIC GOVERNENCE

RULE 1. DEFINITIONS

75 IAC 7-1-1 Applicability

Authority: IC 33-42-16-2

Affected: IC 33-42-0.5

Sec. 1. The definitions in this rule and IC 33-42 apply throughout this article, unless the context

clearly indicates otherwise.

(Secretary of State; 75 IAC 7-1-1)

75 IAC 7-1-2 "Applicant" defined

Authority: IC 33-42-16-2

Affected: IC 33-42-0.5; IC 33-42-12; IC 33-42-17

Sec. 2. "Applicant" means any person applying for a notary public commission under IC 33-42-12 or a notary public registering to be authorized to perform remote notarial acts under IC 33-42-17.

(Secretary of State; 75 IAC 7-1-2)

75 IAC 7-1-3 "Designated alternative signer" defined

Authority: IC 33-42-16-2

Affected: IC 33-42-0.5

Sec. 3. "Designated alternative signer" means any person:

- (1) signing in place of a disabled person;
- (2) signing in the presence of the disabled person;
- (3) establishing proof that the designated alternative signer has the authority to sign on behalf of the disabled person in question; and
- (4) witnessed by another party who has no interest in the document being notarized.

However, a designated alternative signer cannot swear an oath of affirmation in the name of the disabled person.

(Secretary of State; 75 IAC 7-1-3)

75 IAC 7-1-4 "Disqualifying offense" defined

Authority: IC 33-42-16-2

Affected: IC 5-8-3-1; IC 33-42-0.5; IC 33-42-12-1; IC 33-42-13-1; IC 33-42-13-3

Sec. 4. "Disqualifying offense" means any of the following:

- (1) Failure to meet the eligibility requirements under IC 33-42-12-1(b).
- (2) Failure to meet the moral character provision under IC 33-42-13-1(c).
- (3) To engage in any prohibited act under IC 33-42-13-3.
- (4) A conviction under IC 5-8-3-1.

(Secretary of State; 75 IAC 7-1-4)

75 IAC 7-1-5 "Real time" defined

Authority: IC 33-42-16-2

Affected: IC 33-42-0.5

Sec. 5. "Real time" means the actual span of uninterrupted, simultaneous communication during which all parts of an online notarial act using audio visual communication occur excluding issues or buffering that does not materially affect the substantive communication between the notary public and the signer.

(Secretary of State; 75 IAC 7-1-5)

75 IAC 7-1-6 "Remote technology vendor" defined

Authority: IC 33-42-16-2

Affected: IC 33-42-0.5

Sec. 6. "Remote technology vendor" means a person that provides audio visual communication technology and related processes, services, software, data storage, or other services to remote notaries public for the purpose of directly facilitating their performance of remote notarial acts.

(Secretary of State; 75 IAC 7-1-6)

RULE 2. NOTARIES PUBLIC

75 IAC 7-2-1 Notary public application

Authority: IC 33-42-16-2

Affected: IC 4-21.5; IC 33-42-12

Sec. 1. (a) The secretary of state commissions notaries public under the provisions of IC 33-42-12-1. Each applicant applying for a notary commission must electronically submit an application using the notary application prescribed by the secretary of state.

(b) The application for a notary public commission must include the following:

- (1) The applicant's name to be used in acting as a notary public.
- (2) The applicant's mailing address.
- (3) The applicant's county of residence.
- (4) The applicant's date of birth.
- (5) The applicant's driver's license number or state-issued identification number.
- (6) The applicant's Social Security number.
- (7) An image of the applicant's signature sample.
- (8) An image of the applicant's twenty-five thousand dollar (\$25,000) surety bond.

- (9) A passing score on the notary examination.
 - (10) Payment of the nonrefundable application fee to the secretary of state.
 - (11) A criminal background check that is not more than six (6) months old that may be required by the secretary of state.
 - (12) A disclosure of any and all disciplinary actions or commission revocations taken against the applicant.
- (c) A non-Indiana resident, primarily employed in Indiana, must also submit the following:
- (1) The mailing address of the applicant's place of employment.
 - (2) The county where the applicant is employed.
 - (3) A written statement documenting employment on company letterhead.
- (d) Once an applicant successfully complies with all the requirements of subsection (b), and when applicable subsection (c), the secretary of state shall issue a notary commission with a unique commission number and expiration date and indicate this on the public database.
- (e) If an applicant fails to comply with the requirements of subsection (b)(1) through (b)(10), and subsection (c) when applicable, the secretary of state shall inform the applicant that the application has been rejected.
- (f) If an applicant fails to comply with the requirements of subsection (b)(11) or has a disqualifying offense, the secretary of state shall inform the applicant that the application has been denied.
- (g) If an applicant is rejected three (3) times within thirty (30) days, the applicant must wait thirty (30) days before submitting another application.
- (h) If an application is denied, the applicant is entitled to timely notice and a hearing, as described in IC 4-21.5.

(Secretary of State; 75 IAC 7-2-1)

75 IAC 7-2-2 Amendments to notary public commission

Authority: IC 33-42-16-2

Affected: IC 33-42-12

Sec. 2. (a) A notary public must notify the secretary of state not later than thirty (30) days after any change to the following information associated with the notary public:

- (1) Name.
- (2) Mailing address.
- (3) Personal electronic mail address.
- (4) Personal telephone number.
- (5) Employer's:
 - (A) address;
 - (B) name; and
 - (C) telephone number.

(b) A notary public must file the following documents with the secretary of state after any change to the notary public's name on file with the secretary of state's office:

- (1) A rider or other record issued by the notary public's surety reflecting the change of name.

- (2) A sample of the notary public's new signature.

(c) A notary public must notify the secretary of state of the following occurrences not later than fourteen (14) days after occurrence:

- (1) The notary public is convicted of a felony offense involving deceit, dishonesty, or fraud.

- (2) The notary public is found to have acted deceitfully, dishonestly, or fraudulently in any disciplinary action or legal proceeding.
- (3) The notary public has a commission as a notary public denied, restricted, or revoked in a state other than Indiana.
- (d) A notary public must notify the secretary of state after the notary public is no longer:
 - (1) an Indiana resident; or
 - (2) primarily employed in the state of Indiana;
and notice must be treated as a resignation.

(Secretary of State; 75 IAC 7-2-2)

75 IAC 7-2-3 Continuing education for notaries public

Authority: IC 33-42-16-2

Affected: IC 33-42-12

Sec. 3. (a) Continuing education (CE) administered by the secretary of state must be completed every two (2) years after the issuance of a notary commission.

(b) Three (3) CE courses must be completed throughout the duration of the notary commission. The first CE course is due two (2) years after the notary is commissioned. The second CE course is due four (4) years after the notary is commissioned. The third CE course is due six (6) years after the notary is commissioned. Each CE course is due by the end of the anniversary of the month in which the notary is commissioned.

(c) Failure to complete a CE course requirement will result in the expiration of the notary commission.

(d) The curriculum for notary commission continuing education must include, but is not limited to, all of the following:

- (1) The term of a notary commission.**
- (2) Requirements to update and renew a commission.**
- (3) Reporting requirement if a notary public is convicted or pleads guilty or no contest to a disqualifying offense.**
- (4) Geographic jurisdiction of a notary public.**
- (5) Requirements for a notary seal.**
- (6) What constitutes a notarial act that complies with applicable Indiana law and administrative rules.**
- (7) How to perform a complete notarial act, including examples involving commonly notarized documents.**
- (8) Verifying the identity of the principal.**
- (9) The administration of a jurat.**
- (10) Method to notarize a document signed by a designated alternative signer.**
- (11) Overview and examples of prohibited acts.**
- (12) Explanation of electronic notarizations.**
- (13) Explanation of remote notarial acts.**
- (14) What constitutes unauthorized immigration consultant acts and the unauthorized practice of law by a notary.**
- (15) The fees a notary public is permitted to charge.**
- (16) The conditions under which a commission may be revoked.**
- (17) Investigation and disciplinary processes.**

(Secretary of State; 75 IAC 7-2-3)

75 IAC 7-2-4 Notary public renewal

Authority: IC 33-42-16-2

Affected: IC 4-21.5; IC 33-42-12

Sec. 4. (a) Under IC 33-42-12-1(f), a notary commission is valid for eight (8) years after its effective date.

(b) A notary public applying for a commission renewal may apply beginning ninety (90) days prior to the expiration date of the notary public's current commission.

(c) In order to renew a notary commission, each applicant must electronically submit an application for renewal using the notary application prescribed by the secretary of state. The application for renewal is the same as the application for notary public in section 1 of this rule.

(d) If the secretary of state determines that the applicant has complied with the requirement of this rule, the secretary of state shall renew the notary public's commission and extend its term for a period of eight (8) years from expiration of the current commission.

(e) If the notary public's commission expires before the commission is renewed, the notary public's commission shall not be renewed, and the person may apply for a new commission under section 1 of this rule.

(f) If an applicant fails to comply with the requirements of section 1(b)(1) through 1(b)(10) of this rule, and section 1(c)(1) through 1(c)(3) of this rule when applicable, the secretary of state must inform the applicant that the application has been rejected.

(g) If an applicant fails to comply with the requirements of section 1(b)(11) of this rule or has a disqualifying offense, the secretary of state must inform the applicant that the application has been denied.

(h) If an applicant is rejected three (3) times within thirty (30) days, the applicant must wait thirty (30) days before submitting another application.

(i) If an applicant is denied, the affected party is entitled to timely notice and a hearing, as described in IC 4-21.5.

(Secretary of State; 75 IAC 7-2-4)

RULE 3. REMOTE NOTARIES PUBLIC

75 IAC 7-3-1 Eligibility to be authorized as a remote notary public

Authority: IC 33-42-16-2

Affected: IC 33-42-12-1; IC 33-42-17-2

Sec. 1. (a) An applicant must meet the eligibility requirements in IC 33-42-12-1(b) and be a commissioned notary public to be eligible to register for a remote notary public authorization.

(b) There must be at least ninety (90) days remaining on the applicant's notary public commission to register for a remote notary public authorization.

(Secretary of State; 75 IAC 7-3-1)

75 IAC 7-3-2 Submission of remote notary public application

Authority: IC 33-42-16-2

Affected: IC 4-21.5; IC 33-42-17-2

Sec. 2. (a) An individual applying for a remote notary public authorization must use the

remote notary application prescribed by the secretary of state.

(b) The application must include the following:

(1) The name on the applicant's notary public commission.

(2) The applicant's notary public commission number.

(3) The name of the remote technology vendor that the applicant intends to use to perform remote notarial acts.

(4) A disclosure of any and all disciplinary actions or commission revocations taken against the applicant.

(5) A passing score on the remote notary examination.

(6) Payment of the nonrefundable application fee to the secretary of state.

(c) Once an applicant successfully complies with all the requirements of subsection (b), the secretary of state shall issue a remote notary public authorization to the applicant.

(d) If an applicant fails to comply with the requirements of subsection(b), the secretary of state shall inform the applicant that the application has been rejected.

(e) If an applicant fails to comply with the requirements of 75 IAC 7-2-1(b)(11) or has a disqualifying offense, the secretary of state shall inform the applicant that the application has been denied.

(f) If the application is rejected, the secretary of state will issue a notice of the rejection to the applicant electronically. If an applicant is rejected two (2) times within thirty (30), days the applicant must wait an additional thirty (30) days before submitting another application.

(g) If an applicant is denied, the affected party is entitled to timely notice and a hearing, as described in IC 4-21.5.

(Secretary of State; 75 IAC 7-3-2)

75 IAC 7-3-3 Consecutive remote notary public authorization

Authority: IC 33-42-16-2

Affected: IC 33-42-17-2

Sec. 3. (a) A remote notary public authorization is valid from the time the notary public is authorized until the expiration of the notary public commission.

(b) The application must include the following:

(1) The name on the applicant's notary public commission.

(2) The applicant's notary public commission number.

(3) The name of the remote technology vendor that the applicant intends to use to perform remote notarial acts.

(4) A disclosure of any and all disciplinary actions or commission revocations taken against the applicant.

(5) A passing score on the remote notary examination.

(6) Payment of the nonrefundable application fee to the secretary of state.

(c) A notary public cannot apply for a consecutive remote notary public authorization until the secretary of state has renewed its notary public commission.

(d) In order to obtain a consecutive remote notary authorization, each applicant must electronically submit an application for authorization using the application prescribed by the secretary of state. The application for consecutive authorization is the same as the application for a remote notary public authorization registration under section 2 of this rule.

(Secretary of State; 75 IAC 7-3-3)

RULE 4. COMPLAINTS

75 IAC 7-4-1 Submitting a complaint

Authority: IC 33-42-16-2

Affected: IC 5-8-3-1; IC 33-42-13

Sec. 1. (a) Any person may submit a complaint in writing to the secretary of state alleging that:

(1) a notary public has violated one (1) or more of the provisions of this article, IC 33-42-13-3, or IC 5-8-3-1;

(2) a person is performing notarial acts without a notary public commission; or

(3) a person is performing remote notarial acts without a remote notary public authorization.

(b) The complaint must include the name of the notary public or person acting as a notary public and, if applicable:

(1) the notary public's commission number;

(2) the expiration date of the notary public's current commission;

(3) the name, mailing address, and email address of the individual filing the complaint;

(4) whether the notary was performing a remote notarial act;

(5) a recitation of the facts, within the personal knowledge of the complainant, relating to the alleged misconduct by the notary public; and

(6) copies of the notarized documents that are the subject of the complaint.

(c) The complaint must be signed by the person alleging misconduct on the part of the notary public.

(d) The secretary of state may initiate a complaint against a notary public.

(Secretary of State; 75 IAC 7-4-1)

75 IAC 7-4-2 Complaint procedures

Authority: IC 33-42-16-2

Affected: IC 33-42-13

Sec. 2. (a) The secretary of state may determine that the allegations in the complaint are not sufficient to warrant formal disciplinary action. In such case, the secretary of state may:

(1) take no action on the complaint;

(2) informally advise the notary public of the appropriate conduct as well as the applicable statutes and rules governing the conduct; or

(3) request further information from the complainant or the notary public prior to taking action.

(b) If the secretary of state determines that the complaint alleges sufficient facts to result in disciplinary action against the notary public, the secretary of state may send interrogatories or a show cause letter with any attachments the secretary of state deems to be relevant to the notary public.

(c) The notary public must respond to the complaint in writing. The response must:

(1) specify any disputed facts and provide such additional information as the notary public shall desire; and

(2) be received by the secretary of state within thirty (30) days of the date that the secretary of state's mailings were sent to the notary public.

(d) The secretary of state shall review the response and determine whether further administrative action is appropriate. If the secretary determines that no further action is appropriate, the secretary shall notify the notary public and the complainant of the determination in writing.

(e) If the secretary determines that further administrative action is appropriate, the secretary shall take action under IC 33-42-13-1.

(Secretary of State; 75 IAC 7-4-2)

RULE 5. REMOTE NOTARIAL ACTS

75 IAC 7-5-1 Remote notarial act procedures

Authority: IC 33-42-16-2

Affected: IC 33-42-13-1; IC 33-42-17

Sec. 1. (a) A commissioned notary public does not have the authority to perform remote notarial acts unless authorized by the secretary of state as a remote notary public.

(b) A remote notary public must be physically located within the boundaries of Indiana at the time the notarial act takes place.

(c) A remote notary public shall not perform a remote notarial act if the principal does not appear in real time by audio visual communication before the remote notary public.

(d) The methods by which a remote notary public identifies a principal are any of the following:

(1) Remote notary public personally knows the principal.

(2) Principal is introduced by oath of credible witness who personally knows the principal and either is personally known to the remote notary public or provides qualifying identification in accordance with subdivision (3).

(3) Principal or credible witness is identified using the identity proofing and credential analysis standard in accordance with 75 IAC 7-8-1.

(e) For all notarial acts that require a notarial certificate, the remote notary public shall complete an electronic notarial certificate that meets all the requirements in IC 33-42-17-7. The notarial certificate must be signed by affixing the remote notary public's electronic signature and electronic seal. The digital certificate for the remote notarial act must be attached to render the document tamper evident.

(f) The liability, sanctions, and remedies for the improper performance of remote notarial acts are the same as the disciplinary action under IC 33-42-13-1.

(g) A remote notary public must keep a record of all notarial acts that complies with 75 IAC 7-6-1. In addition, the notary public must at a minimum:

(1) confirm that the principal has successfully completed identity proofing and credential analysis;

(2) confirm the identity of the principal through visual inspection of the credential used during credential analysis; and

(3) ensure that an audio visual recording captures the notarial act performed.

(h) If the principal is personally known to the remote notary public, the audio visual conference must include a statement disclosing the personal relationship.

(i) The remote notary public shall not disclose any access information used to affix the

notary's electronic signature and seal except when requested by the secretary of state, law enforcement, the courts, and with reasonable precautions, electronic document preparation and remote technology vendors.

(j) A remote notary public must attach the notary's electronic signature and seal to the electronic notarial certificate of an electronic document in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document tamper evident.

(Secretary of State; 75 IAC 7-5-1)

75 IAC 7-5-2 Reasons to refuse to perform remote notarial acts

Authority: IC 33-42-16-2

Affected: IC 33-42-9-5

Sec. 2. In addition to the refusal grounds set forth in IC 33-42-9-5, relating to refusal of requests for notarial services, a remote notary public must refuse to perform a remote notarial act if:

- (1) the remote notary public is unable to verify the identity of the principal using an acceptable means of identification;
- (2) the remote notary public is unable to verify the security of the audio visual communication;
- (3) the signature of the principal cannot be attached to the electronic document; or
- (4) the digital certificate or electronic seal of the remote notary public cannot be attached to the electronic document to render the document tamper evident.

(Secretary of State; 75 IAC 7-5-2)

RULE 6. ELECTRONIC DOCUMENTING STANDARDS

75 IAC 7-6-1 Prohibition against entering personal information in an electronic journal

Authority: IC 33-42-16-2

Affected: IC 33-42-17-8

Sec. 1. (a) A notary public (other than a court clerk notarizing instruments for the court) shall not record in the notary's record journal:

- (1) an identification number that was assigned by a governmental agency or by the United States to the principal and that is set forth on the identification card or passport presented as identification;
- (2) any other number that could be used to identify the principal of the document; or
- (3) a biometric identifier, including a fingerprint, voice print, and retina or iris image.

(b) This section does not prohibit a notary public from recording a number related to the mailing address of the principal of the document or the instrument.

(c) This section does not apply to the audio visual recording required by a remote notary public performing a remote notarial act.

(d) A notary public who inadvertently records information prohibited under subsection (a) must redact such information prior to providing public access to or copies of the notary record book.

(e) Upon a remote notary public's learning that an electronic journal is lost, stolen, or compromised, the remote notary public shall notify the secretary of state within fifteen (15) days.

(Secretary of State; 75 IAC 7-6-1)

75 IAC 7-6-2 Electronic notary seal

Authority: IC 33-42-16-2

Affected: IC 33-42-0.5-13; IC 33-42-17-6

Sec. 2. (a) The name on the electronic notary public seal must match the name, as stated on the application, under which the notary public is commissioned and performs all remote notarial acts.

(b) The technology used to attach an electronic signature to a document must allow a notary public's electronic signature to be:

- (1) attributed or uniquely linked to the notary public;
- (2) capable of independent verification;
- (3) retained under the notary public's exclusive control implemented by use of passphrase protection; and
- (4) linked to the electronic document to which it relates in such a manner that any subsequent change of the electronic document is detectable.

(c) The official seal of a notary public must include the requirements listed in IC 33-42-0.5-13.

(Secretary of State; 75 IAC 7-6-2)

RULE 7. REMOTE TECHNOLOGY CONTINUING RESPONSIBILITIES

75 IAC 7-7-1 Changes to selected remote technology vendor

Authority: IC 33-42-16-2

Affected: IC 33-42-17-11

Sec. 1. The notary public must notify the secretary of state within thirty (30) days after the notary public changes the remote technology vendor or contracts with an additional remote technology vendor. A notary public may use more than one (1) remote technology vendor. If the notary public fails to meet these standards, then the secretary of state may suspend or revoke the notary public's commission and the notary public's remote authorization.

(Secretary of State; 75 IAC 7-7-1)

75 IAC 7-7-2 Changes to digital certificate and electronic seal

Authority: IC 33-42-16-2

Affected: IC 33-42-17-6; IC 33-42-17-7

Sec. 2. (a) A notary public must, at all times, maintain a digital certificate and electronic seal that includes the notary public's electronic signature. The digital certificate must comply with the provisions of IC 33-42-17-7, and the electronic seal must comply with 75 IAC 7-6-2.

(b) A notary public must replace a digital certificate under any of the following circumstances:

- (1) The electronic seal or digital certificate has expired.
- (2) The electronic seal or digital certificate is for any reason no longer valid or capable of authentication.
- (3) The notary public has changed any of the following:

- (A) Name.
- (B) County of commission or county of primary employment.
- (C) Notary public commission number.

(Secretary of State; 75 IAC 7-7-2)

RULE 8. REMOTE TECHNOLOGY VENDOR REQUIREMENTS

75 IAC 7-8-1 Identity proofing and credential analysis standards

Authority: IC 33-42-16-2

Affected: IC 33-42-17-5

Sec. 1. (a) Identity proofing and credential analysis must be facilitated by an approved remote technology vendor.

(b) Identity proofing must be performed through dynamic knowledge based authentication or through another process or service approved by the secretary of state.

(c) Dynamic knowledge based authentication must, at a minimum:

- (1) contain five (5) questions, drawn from public or private data sources;
- (2) generate a minimum of five (5) possible answer choices per question;
- (3) maintain a passing score of at least eighty percent (80%); and
- (4) require that all five (5) questions answered within two (2) minutes.

(d) Credential analysis must, at a minimum:

- (1) verify the identity of a principal or any credible witness;
- (2) utilize appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified; and
- (3) enable the remote notary public to visually compare for consistency the information and photo presented on the credential itself and the principal as viewed by the remote notary public in real time through audio visual communication.

(e) If the principal exits the authentication workflow or the communication is materially interrupted, the principal must meet the criteria outlined in this section and restart the identity proofing and credential analysis.

(Secretary of State; 75 IAC 7-8-1)

75 IAC 7-8-2 Remote notarial act system

Authority: IC 33-42-16-2

Affected: IC 33-42-17-6

Sec. 2. A remote notary system used to perform remote notarial acts by means of audio visual communication must:

- (1) provide for real time audio visual feeds;
- (2) provide sufficient video resolution and audio clarity to enable the remote notary public and the principal to see and speak to each other simultaneously through real time transmission;
- (3) provide sufficient captured image resolution for credential analysis to be performed;
- (4) include a means of authentication that reasonably ensures only the proper parties have access to the audio visual communication;
- (5) provide some manner of ensuring that the electronic record that is subject to the remote notarial act is the same record electronically signed by the principal;

(6) securely create, store, and transmit an electronic recording of the audio visual communication, maintaining the confidentiality of any identity proofing responses or analysis; and

(7) provide reasonable security measures to prevent unauthorized access to:

(A) the real time transmission of the audio visual communication;

(B) a recording of the audio visual communication;

(C) the verification methods and credentials used to verify the identity of the principal; and

(D) the electronic documents presented for electronic notarization.

(Secretary of State; 75 IAC 7-8-2)

75 IAC 7-8-3 Remote technology vendor

Authority: IC 33-42-16-2

Affected: IC 33-42-17-6

Sec. 3. (a) A remote technology vendor must apply with and be approved by the secretary of state.

(b) The secretary of state must provide the names and contact information of approved remote technology vendors on its official website.

(c) Remote technology vendors must provide notice to the secretary of state within fifteen (15) days if their contact information changes.

(d) Remote technology vendors must provide notice to notaries utilizing their services and the secretary of state's office fifteen (15) days prior to the date that they will no longer provide remote technology services.

(e) If a remote technology vendor intends to make material modifications that affect its compliance with Indiana law or this title, notice must be provided to the secretary at least ten (10) days prior to such modifications, and implementation shall only occur upon receiving the approval from the secretary of state.

(f) A remote technology vendor must electronically report the following:

(1) A monthly listing of all notaries public that have on-boarded to the vendor's software.

(2) A monthly listing of all notaries public that have off-boarded from the vendor's software.

(g) A remote technology vendor application expires two (2) years after the date the application is approved.

(Secretary of State; 75 IAC 7-8-3)