CHRISTOPHER T. SUNUNU
Governor

STATE OF NEW HAMPSHIRE
OFFICE OF THE GOVERNOR

STATE OF NEW HAMPSHIRE
BY HIS EXCELLENCY
CHRISTOPHER T. SUNUNU, GOVERNOR

Emergency Order #11 Pursuant to Executive Order 2020-04

Temporary authority to perform secure remote online notarization

Pursuant to Section 18 of Executive Order 2020-04, it is hereby ordered, effective immediately, that:

1. In order to provide New Hampshire citizens and businesses with a secure and safe method by which to execute important legal documents, and to promote and secure the safety and protection of the people of New Hampshire, for the duration of the State of Emergency declared in Executive Order 2020-04 and subject to the provisions of this Order, a notarial officer commissioned under the laws of this State may perform a notarization for an individual not in the physical presence of the notary officer if:

   (A) the individual and the notarial officer can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization;

   (B) the notarial officer—

   i. has reasonably identified the individual by one or more of the following—

   a) personal knowledge of the individual;
   b) at least two different types of processes or services by which a third person provides a means to verify the identity of the individual through a review of public or private data sources; or
   c) oath or affirmation of a credible witness who (I) is in the physical presence of either the notarial officer or the individual or (II) is able to communicate with the notarial officer and the individual simultaneously by sight and sound through an electronic device or process at the time of the notarization, if the credible witness has personal knowledge of the individual and has been reasonably identified by the notarial officer under clause (a) or (b); and

   ii. either directly or through an agent:

   a) creates an audio and visual recording of the performance of the notarization; and
   b) retains such recording as a notarial record during the term of the notarial officer's office, including renewals thereof, unless a law of the State requires a different period of retention, and if any laws of the State govern the content, retention, security, use, effect, and disclosure of such recording and any information contained therein such recording shall be subject thereto; and

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iii. for an individual physically located outside the geographic boundaries of the State of New Hampshire—

a) the record—
   1) is intended for filing with or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of the State of New Hampshire; or
   2) involves property located in the territorial jurisdiction of the State of New Hampshire or a transaction substantially connected to the State of New Hampshire; and

b) the notarial officer has no actual knowledge that the act of making the statement or signing the record is prohibited by the laws of the jurisdiction in which the individual is physically located.

2. If a State law requires an individual to appear personally before or be in the physical presence of a notarial officer at the time of a notarization that requirement shall be satisfied if the individual and the notarial officer are not in the physical presence of each other but can communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization.

3. Nothing in this Order shall require a notarial officer commissioned under the laws of the State of New Hampshire to perform a notarization—

(A) with respect to an electronic record;

(B) for an individual not in the physical presence of the notarial officer; or

(C) using a technology that the notarial officer has not selected.

4. Once signed, the requesting person shall mail the signed copy of the documents to the notarial officer for certification and execution with the notarial officer's signature and the official stamp or seal.

5. The official date and time of the notarization shall be the date and time when the notarial officer witnesses the signature via the electronic devices that provide the audio/video presence.

6. The validity and recognition of a notarization under this Order shall not prevent an aggrieved person from seeking to invalidate a record or transaction that is the subject of a notarization or from seeking other remedies based on State or Federal law other than this Order for any reason not addressed in this Order, including on the basis—

(A) that a person did not, with present intent to authenticate or adopt a record—
   i. execute or adopt on the record a tangible symbol; or
   ii. attach to or logically associate with the record an electronic signature;

(B) that an individual was incompetent, lacked authority or capacity to execute the record, or did not knowingly and voluntarily execute a record; or

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(C) of fraud, forgery, mistake, misrepresentation, impersonation, duress, undue influence, or other invalidating cause.

7. Nothing in this Order shall affect or supersede a State law or rule governing, authorizing, or prohibiting the practice of law.

8. The failure of a notarial officer to meet a requirement specified in this Order shall not invalidate or impair the recognition of a notarization performed by the notarial officer under the authority granted in this Order.

9. This Order shall not be construed to create a public or private cause of action or remedy.

10. This Order shall not affect the validity of a notarization performed before the effective date hereof. The validity and recognition of a notarization performed pursuant to the terms of this Order and during the period hereof, shall not be affected by the subsequent expiration, modification, amendment or revocation of this Order.

11. If any provision of this Order or the application of such provision to any person or circumstance is held to be invalid or unconstitutional, the reminder of this Order and the application of the provisions thereof to other persons or circumstances shall not be affected thereby.

12. In this Order:

(A) The term "commissioned" includes appointed and licensed.

(B) The term "electronic" has the meaning given that term in NH RSA 294-E:2, V.

(C) The term "electronic record" has the meaning given that term in NH RSA 294-E:2, VII.

(D) The term "electronic signature" has the meaning given that term NH RSA 294-E:2, VIII.

(E) The term "information" has the meaning given that term in NH RSA 294-E:2, X.

(F) The term "law" includes any statute, regulation, or rule of law.

(G) The term "notarization" includes:

i. any act—whether performed with respect to a tangible or electronic record and whether performed in an individual, official, or representative capacity—that a notarial officer may perform under the State of New Hampshire or the law of the State in which the individual giving the acknowledgment is located, or under the laws of the State under which the notarial officer is commissioned; and

ii. any such act in which an individual making a statement or executing a record is not in the physical presence of the notarial officer but is able to communicate with the notarial officer simultaneously by sight and sound through an electronic device or process at the time of such act.

(H) The term "notarial officer" has the meaning given that term in NH RSA 456-B:1, V.

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(I) The term "person" has the meaning given that term in NH RSA 294-E:2, XII.

(J) The term "record" has the meaning given that term in NH RSA 294-E:2, XIII.

(K) The term "requirement" includes a duty, a standard of care, or a prohibition.

(L) The term "simultaneously" means substantially simultaneously and without unreasonable interruption or disconnection but includes reasonably short delays inherent or common in the method of communication.

(M) The term "stamp or seal of office" means an image containing information as specified under the law of the State in which a notarial officer is commissioned, which is used by the notarial officer to authenticate the notarization of a record, and which may consist of a physical image or impression affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record.

(N) The term "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, every territory or possession subject to the jurisdiction of the United States, and every federally recognized Indian tribe, and includes any executive, legislative, or judicial agency, court, department, board, office, clerk, recorder, register, commission, authority, institution, or instrumentality and any county, municipality, or other political subdivision thereof.

Given under my hand and seal at the Executive Chambers in Concord, this 23rd day of March, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.

Chris T. Sununu

GOVERNOR OF NEW HAMPSHIRE

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