Office of
The Governor

37 FY 19/20

DATE April 8, 2020

AN ORDER TEMPORARILY MODIFYING CERTAIN IN-PERSON NOTARIZATION AND ACKNOWLEDGEMENT REQUIREMENTS

WHEREAS, I proclaimed a state of emergency on March 15, 2020 to authorize the use of emergency powers in order to expand and expedite the State's response to the many different effects of COVID-19; and

WHEREAS, the in-person services of notaries public and witnesses are required to complete and validate a wide variety of important personal and commercial transactions; and

WHEREAS, it is now necessary for those services to be provided remotely to ensure the social distancing recommended by the United States and Maine Centers for Disease Control and Prevention; and

WHEREAS, a governor's emergency powers pursuant to 37-B M.R.S. §742(1)(C)(1) and §834 expressly include the authority to suspend the enforcement of statutes, orders or rules where strict compliance therewith would in any way prevent, hinder or delay necessary action in coping with the emergency; and

WHEREAS, this Order will enable citizens, especially those who are elderly or have serious underlying health conditions, to continue to seek and obtain critical estate planning instruments, such as Last Will and Testaments, Financial Powers of Attorney, Healthcare Powers of Attorney, and for all persons to conduct other important business that requires sworn statements or affidavits, in a manner that reduces in-person contact and promotes social distancing; and

WHEREAS, the requirements of this Order are designed to protect the reliability of in-person notary acknowledgments, sworn statements and affidavits;

NOW, THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to 37-B M.R.S. Ch. 13, including but not limited to the provisions cited above, do hereby Order as follows:

I. APPLICATION

This Order applies to all provisions of Maine law that require a signature to be acknowledged, witnessed or notarized in person, with the exceptions of: (a) solemnizing marriages, (b) administering oaths to circulators of state or local direct initiative or referendum petitions and nomination petitions of candidates for electoral office, and (c) absentee ballots in state and local elections. This Order authorizes remote, not electronic, notarization. All requirements under Maine law pertaining to the taking of sworn statements and acknowledgments by notaries and those authorized to perform notarial acts, other than the requirement to appear in person, remain in effect during the effective period of this Order.

II. ORDERS

While this Order is in effect, with the exceptions noted in Part I of this Order, the enforcement of those provisions of Maine law that require the physical presence of the person whose oath is being taken ("the Signatory") at the same location as the Notary Public or other person authorized to perform a notarial act ("the Notary") and any witness to the signing are hereby suspended provided the conditions set forth in paragraphs A-G of this Section are met.

A. The Notary must be physically within the State while performing the notarial act and must follow any additional guidance for remote notarization issued by the Maine Secretary of State.

B. The act of notarization or witnessing required by Maine law may be completed remotely via two-way audio-video communication technology, provided that:

1. The two-way audio-video communication technology must allow direct contemporaneous interaction between the individual signing the document ("the Signatory"), the Notary and any witness by sight and sound in real time (e.g. with no pre-recordings);

2. The Signatory must be reasonably identified by the Notary by one or more of the following:

(a) is personally known to the Notary;

(b) presented a valid photo identification to the Notary during the video conference;

(c) the oath or affirmation of a witness who:

(i) is in the physical presence of either the Notary or the Signatory; or

(ii) is able to communicate with the Notary and the Signatory simultaneously by sight and sound through an electronic device or process at the time of the notarization, if the

witness has personal knowledge of the individual and has been reasonably identified by the Notary under clauses (a) or (b) herein.

3. The Signatory must attest to being physically located in Maine and affirmatively state the name of the county in which the Signatory is located at the time of execution during the two-way audio-video communication;

4. The Notary and any witness must attest to being physically located in Maine during the two-way audio-video communication;

5. For Wills and Powers of Attorney, the Notary or at least one witness must be an attorney licensed to practice law in the State of Maine;

6. Before any documents are signed, the Notary must be able to view by camera the entire space in which the Signatory and any witness is located, and any person who is present in those spaces must state their name while on video and in clear view of the Notary;

7. The Signatory must affirmatively state on the two-way audio-video communication what document the Signatory is signing and the Notary must be provided with a copy of the document prior to the signing;

8. Each page of the document being witnessed must be shown to the Notary and any witness on the two-way audio-video communication in a means clearly legible to the Notary and initialed by the Signatory in the presence of the Notary and any witness;

9. The act of signing and initialing must be captured sufficiently up close on the two-way audio-video communication for the Notary to observe;

10. Any witness or witnesses required or permitted to properly execute any original document or documents according to Maine Law may similarly witness the signing of the document by the Signatory utilizing two-way audio-video communication described in paragraph 1 and may sign as a witness to the document upon receipt of the original document;

11. The Signatory must transmit by fax or electronic means (which may include transmitting a photograph of every page by cellphone) a legible copy of the entire signed document directly to the Notary and any witness, immediately after signing the document, or, if that is not possible, no later than 24 hours after the Signatory's execution of the document;

12. The Signatory must send the original signed document directly to the witness within 48 hours (or 2 days) after the Signatory's execution of the document, or to the Notary if no witness is involved;

13. Within 48 hours after receiving the original document from the Signatory, the witness must sign it and sent to the second witness, if any, or to the Notary if no other witness is involved. The official date and time of each witness's signature shall be the date and time when the witness witnesses the Signatory's signature via the two-way audio-video communication technology described in paragraph 1;

14. Upon review of the original document and satisfactory comparison with the faxed or electronic document provided on the date of signing, the Notary shall notarize the original document within 48 hours of receipt thereof, and the official date and time of the notarization shall be the date and time when the Notary witnessed the signature via the two-way audio-video technology and shall add the following language below the Notary and or Witness signature lines: "*Notarized (and/or Witnessed) remotely, in accordance with Executive Order 37 FY 19/20*"; and

15. A recording of the two-way audio-video communication must be made and preserved by the Notary for a period of at least 5 years from the date of the notarial act. The Notary shall provide a copy of the recording to the Signatory and the Secretary of State upon request.

C. Any document that is required under any law of the State of Maine to be notarized "in the presence and hearing" or similar language of a Signatory, and that is signed, notarized or witnessed in accordance with the terms of this Executive Order shall be deemed to have been signed and/or notarized in the presence and hearing of the Signatory.

D. Nothing in this Order shall require a Notary to perform remote notarization.

E. The validity and recognition of a notarization or witness 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, such as incapacity, absence of authority or undue influence.

F. The failure of a Notary or a witness to meet a requirement specified in this Order shall not invalidate or impair the recognition of a notarization performed by the Notary if it was performed in substantial compliance with this Order.

G. The Secretary of State is authorized to issue guidance consistent with this Order to protect the integrity of the remote notarization process.

III. INTEGRITY

A primary and essential purpose of this Order is to safeguard the integrity of transactions and the important personal interests served by those transactions. Persons who violate the rights of others during a remote notarization are subject to all pertinent civil remedies and criminal penalties.

IV. JUDICIAL NOTICE

A copy of this Order shall for notice be provided to the Chief Justice of the Maine Supreme Judicial Court. I intend further that the acts, records and proceedings under this Order receive full faith and credit in the courts of the United States and other states.

V. EFFECTIVE DATE

This Order shall take effect on April 8, 2020 and, unless sooner amended or rescinded, terminates 30 days after the termination of the COVID-19 state of emergency.

Janet T. Mills
Governor