STATE OF ARKANSAS
EXECUTIVE DEPARTMENT

# PROCLAMATION

TO ALL TO WHOM THESE PRESENTS COME – GREETINGS: EO 20 – 12

**EXECUTIVE ORDER TO AMEND EXECUTIVE ORDER 20-03 FOR THE PURPOSE OF SUSPENDING PROVISIONS REQUIRING IN-PERSON WITNESSING AND NOTARIZATION OF LEGAL DOCUMENTS IN THE STATE OF ARKANSAS**

WHEREAS: An outbreak of coronavirus disease 2019 (COVID-19) has spread throughout China and to 59 other countries and territories, including the United States;

WHEREAS: COVID-19 has been detected within the State of Arkansas and adjoining states, threatening the public safety of the citizens of Arkansas;

WHEREAS: Great hardship has been brought to bear upon the citizens this state as a result of the spread of COVID-19;

WHEREAS: On March 11, 2020, by Executive Order 20-03, an emergency was declared in the state as a result of COVID-19, and that emergency is on-going;

WHEREAS: On March 13, 2020, I ordered the suspension of provisions requiring in-person encounters and face-to-face examinations using real-time audio and visual means to establish professional relationships in healthcare in the state;

WHEREAS: Arkansas law currently requires a last will and testament to be witnessed by two (2) or more persons who are in the presence of the testator;

WHEREAS: Arkansas law currently requires notaries public to witness the signing of legal documents in person or otherwise recognize the signature of the signer by virtue of familiarity with the signature;

WHEREAS: Policies in place at skilled nursing facilities, assisted living facilities and other residential facilities are now preventing witnesses and notaries public from meeting in person with elderly and disabled residents;

WHEREAS: The elderly and disabled populations of the state are among the most vulnerable to serious risk of harm to their health and finances because of COVID-19. These vulnerable populations are being deprived of the ability to obtain services and complete essential legal documents necessary to protect themselves, their property, and their loved ones;

WHEREAS: The requirement of in-person witnessing was established for the protection of Arkansas residents, but it now may prevent our most vulnerable populations from receiving legal services in a time of great need;

WHEREAS: The State of Arkansas has seen fit to provide electronic notary services to the citizens of the State pursuant to Arkansas Code Annotated § 21-14-301, *et seq.*;

WHEREAS: Videoconferencing technology and electronic signature technology have improved significantly, diminishing the risks of remote witnessing;

WHEREAS: I have determined that the witnessing of legal documents via real-time audio and visual means is necessary and expedient to meet the state emergency, so long as each person participating in the signing is physically located in the State of Arkansas at the time of signing; and

WHEREAS: State resources are continuously being deployed to render maximum aid and assistance during this emergency.

NOW, THEREFORE, I, Asa Hutchinson, Governor of the State of Arkansas, acting under the authority vested in me by Ark. Code Ann. §§ 12-75-101, *et seq.*, do hereby amend Executive Order 20-03 declaring an emergency in the State of Arkansas, and order the suspension of provisions of Arkansas Code regarding Notaries Public for the duration of this emergency in the following manner:

(1) Suspend provisions of Ark. Code Ann. § 21-14-107(f)(2) that deem notarial certificates to be incomplete to allow an official signature or seal of a notarial certificate or seal to be executed at a time when the principal or signer is not present in person but is otherwise present remotely, as well as allow a signed or sealed notarial certificate to be executed with the understanding that the notarial certificate will be completed or attached to a document outside of the physical presence of the notary public, when a notary public who is an attorney licensed by the State of Arkansas, a notary public who is a title agent licensed by the State of Arkansas, a notary public who is supervised by either an attorney or a title agent licensed by the State of Arkansas, or a notary public employed by a financial institution registered with the Arkansas State Bank Department, is present via real-time audio and visual means for the remainder of this emergency;

(2) Suspend provisions of Ark. Code Ann. § 21-14-202 requiring notaries public, when a notary public who is an attorney licensed by the State of Arkansas, a notary public who is a title agent licensed by the State of Arkansas, a notary public who is supervised by either an attorney or a title agent licensed by the State of Arkansas, or a notary public employed by a financial institution registered with the Arkansas State Bank Department, to file their signatures, general descriptions of potential commercial documents to be notarized via facsimile signature, the names of persons signing documents via facsimile signature, and the written consent of such persons, to the Secretary of State for the remainder of this emergency when said notaries determine that documents would be best notarized via facsimile signature;

(3) Suspend provisions of Ark. Code Ann. § 21-14-302 requiring electronic notaries public, when a notary public who is an attorney licensed by the State of Arkansas, a notary public who is a title agent licensed by the State of Arkansas, a notary public who is supervised by either an attorney or a title agent licensed by the State of Arkansas, or a notary public employed by a financial institution registered with the Arkansas State Bank Department, to have sufficient physical proximity to allow for the use and reliance on an electronic device, such as a telephone, computer, video-camera, or facsimile machine and otherwise register with a separate commission to perform electronic notarial acts under the laws of this state for the remainder of this emergency;

(4) Suspend provisions of Ark. Code Ann. § 21-14-307 requiring electronic notaries public, when a notary public who is an attorney licensed by the State of Arkansas, a notary public who is a title agent licensed by the State of Arkansas, a notary public who is supervised by either an attorney or a title agent licensed by the State of Arkansas, or a notary public employed by a financial institution registered with the Arkansas State Bank Department, to have sufficient physical proximity to allow said electronic notaries public to perform and witness electronic notarial acts if the document signer or witness does not appear in person before the electronic notary public at the time of the electronic notarial act, but is otherwise present via real-time audio and visual means for the remainder of this emergency consistent with the text of this executive order;

(5) Notwithstanding any general or special law to the contrary, notaries public, when a notary public who is an attorney licensed by the State of Arkansas, a notary public who is a title agent licensed by the State of Arkansas, a notary public who is supervised by either an attorney or a title agent licensed by the

State of Arkansas, or a notary public employed by a financial institution registered with the Arkansas State Bank Department, may notarize signatures including Acknowledgments and Jurats virtually through real-time audio and visual means provided that both the notary public and the signer are both physically located in the State of Arkansas at the time of signing, and the signing of documents is visually seen by the person that confirms it;

(6) Pursuant to this Order, any person who witnesses or signs a document through real-time audio and visual means may be considered to be either "in the presence of," or as an "in person" witness, provided that the presence and identity of such witness are validated at the time of the signing by a notary public who is an attorney licensed by the State of Arkansas, a notary public who is a title agent licensed by the State of Arkansas, a notary public who is supervised by either an attorney or a title agent licensed by the State of Arkansas, or a notary public employed by a financial institution registered with the Arkansas State Bank Department. The identity and physical presence of any and all witnesses and signers in the State of Arkansas must be validated at the time of execution of the documents to be witnessed;

(7) For purposes of this Order, "real-time audio and visual means" means technology where all parties can see and hear the other parties simultaneously. Examples of "videoconference technology" include, but are not limited to, Skype, Zoom, FaceTime and other similar technologies;

(8) For purposes of this Order, if two (2) or more persons sign a document simultaneously in different locations, they must necessarily sign separate signature pages and therefore all documents executed in this manner must be executed in counterparts;

(9) Notwithstanding any general or special law to the contrary, absent an express prohibition in a document against signing in counterparts, all legal documents, including deeds, last wills and testaments, durable powers of attorney, and health care proxies, may be signed in counterpart;

(10) Authority granted pursuant to this Order shall automatically expire when the state of emergency is terminated, or at such other time as I may direct in a subsequent Executive Order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed this 30th day of March, in the year of our Lord 2020.

Asa Hutchinson, Governor