State of Delaware

Executive Department
Dover

ELEVENTH MODIFICATION OF THE DECLARATION OF A STATE OF EMERGENCY FOR THE STATE OF DELAWARE DUE TO A PUBLIC HEALTH THREAT

WHEREAS, the Centers for Disease Control and Prevention ("CDC") has determined that a novel coronavirus ("COVID-19") presents a serious public health threat, and has advised the public that asymptomatic individuals may be carriers of the COVID-19 virus and may unknowingly spread the virus to other individuals in close proximity, and therefore, social distancing is required to help mitigate the individual exposure to (and community spread of) the COVID-19 virus; and

WHEREAS, it is in the best interests of the State to protect its citizens from a public health emergency that could threaten the lives of those who live and work here; and

WHEREAS, on March 12, 2020 at 3:00 p.m. E.D.T., I issued a State of Emergency due to the public health threat of COVID-19, which became effective as of 8:00 a.m. E.D.T. on March 13, 2020 (the "COVID-19 State of Emergency"); and

WHEREAS, on March 16, 2020 at 2:00 p.m. E.D.T., I issued the First Modification to the

COVID-19 State of Emergency declaration to advise that the CDC issued new guidance for large events and mass gatherings, recommending that organizers halt gatherings of 50 people or more for the next eight weeks due to the public health threat of COVID-19, including conferences, social events, concerts and other types of assemblies; and

WHEREAS, on March 18, 2020 at 2:00 p.m. E.D.T., I issued the Second Modification to the COVID-19 State of Emergency declaration that modified the limitations on public gatherings of 50 or more people and, among other things, placed certain restrictions on the operation of certain businesses and facilities in the State of Delaware; and

WHEREAS, on March 21, 2020 at 12:00 p.m. E.D.T., I issued the Third Modification to the COVID-19 State of Emergency declaration to close all Delaware beaches, except to persons using the beaches for exercise or to walk their dogs, subject to certain precautions recommended by the CDC on COVID-19, which became effective as of 5:00 p.m. E.D.T.; and

WHEREAS, on March 23, 2020 at 4:00 p.m. E.D.T. and 4:02 p.m. E.D.T., respectively, I issued the Fourth and Fifth Modifications to the COVID-19 State of Emergency declaration to close all non-essential businesses in Delaware, except those that can offer goods and services on the Internet, and to order a Shelter in Place for Delaware residents; and

WHEREAS, on March 24, 2020 at 4:00 p.m. E.D.T. I issued the Sixth Modification to the COVID-19 State of Emergency declaration to provide a moratorium on evictions and foreclosure proceedings to enable Delawareans to shelter in place safely, extended the presidential primary, provided for absentee balloting during the COVID-19 crisis, provided for a modified state procurement process, and placed a moratorium on cancellation of insurance policies for delay in premium payments caused by the economic uncertainty; and

WHEREAS, on March 29, 2020 at 4:30 p.m. E.D.T., I issued the Seventh Modification to

the COVID-19 State of Emergency declaration to provide for the self-quarantine of travelers from areas severely impacted by COVID-19 outside the State of Delaware into the State; and

WHEREAS, on March 30, 2020 at 5:00 p.m. E.D.T., I issued the Eighth Modification to the State of Emergency declaration to permit a comprehensive approach to the provision of childcare in the State of Delaware during the State of Emergency to support essential workers; and

WHEREAS, on April 1, 2020 at 3:00 p.m. E.D.T., I issued the Ninth Modification to the COVID-19 State of Emergency declaration to permit a comprehensive approach to the provision of childcare in the State of Delaware during the State of Emergency to support essential workers; and

WHEREAS, on April 6, 2020 at 6:00 p.m. E.D.T., I issued the Tenth Modification to the COVID-19 State of Emergency declaration to further restrict the operation of non-essential businesses to limit the spread of COVID-19; and

WHEREAS, on April 10, 2020 at 3:30 p.m. E.D.T., I extended the COVID-19 State of Emergency declaration, as modified; and

WHEREAS, Delaware's long-term care facilities are at heightened risk for COVID-19 and we must act quickly to protect our most vulnerable populations; and

WHEREAS, citizens of the State of Delaware rely on Delaware attorneys for essential services including conducting real-estate transactions, preparing estate-planning documents, and handling other legal matters that require that documents be notarized and/or witnessed; and

WHEREAS, all persons licensed to practice law in Delaware are authorized to notarize documents under the Rules of the Supreme Court of Delaware and 29 Del. C. § 4323(a)(3); and

WHEREAS, law offices of the State of Delaware are essential businesses pursuant to the Fourth and Fifth Modifications to the State of Emergency; and

WHEREAS, 29 Del. C. § 4309(c) states: "a notary public or electronic notary public shall not notarize a document without the person signing the document being personally present;" and

WHEREAS, in the interest of protecting the citizens of this state from a public health threat, the Governor is authorized by law to issue an order reasonably necessary to maintain life and health and to suspend the provisions of any regulatory statute prescribing the procedures for conducting state business where strict compliance with the statute may hinder necessary action in coping with the emergency.

NOW, THEREFORE, I, JOHN C. CARNEY, pursuant to Title 20, Chapter 31 of the Delaware Code, in an effort to control and prevent the spread of COVID-19 within the State of Delaware, do hereby order that the COVID-19 State of Emergency declaration, as modified and extended, shall remain in effect until further notice, with the following modifications and additions:

A. PUBLIC HEALTH

1. Effective April 15, 2020 at 8:00 p.m. E.D.T., all health care providers who test for COVID-19 shall comply with the Public Health Authority's guidance for the use of such tests. Further, all such providers must provide each patient tested with educational materials developed by the Public Health Authority.
2. The Eighth Modification of the COVID-19 State of Emergency declaration, dated March 30, 2020, Paragraph 2.c., is modified to add "home health agencies and personal assistance service agencies" to the list of regulated facilities.
3. The Public Health Authority is hereby authorized to issue orders, as it deems necessary, to monitor, treat, prevent, reduce the spread of, and suppress COVID-19 in and around all facilities and agencies licensed by the Division of Health Care

Quality under Title 16.

4. Nursing facilities, assisted living facilities, rest residential facilities, and intermediate care facilities for persons with intellectual disabilities licensed under Title 16, Chapter 11 shall immediately ensure that they are in full compliance with Public Health Authority guidance related to COVID-19. Such facilities shall check Division of Public Health guidance daily to ensure that the facilities are complying with the most current guidance and shall adjust their policies, procedures, and protocols accordingly.

5. All nursing facilities, assisted living facilities, rest residential facilities, and intermediate care facilities for persons with intellectual disabilities shall immediately implement, to the best of their ability, the following personnel practices:

   a. Establish a cohort of staff who are assigned to care for residents with known or suspected COVID-19.

   b. Designate a room, unit, or floor of the facility as a separate observation area where newly admitted and readmitted residents are kept for 14 days on contact and droplet precautions while being observed every shift for signs and symptoms of COVID-19.

   c. Designate a room, unit, or floor of the facility to care for residents with known or suspected COVID-19.

6. Returning residents to their nursing facility, assisted living facility, rest residential facility, or intermediate care facility for persons with intellectual disabilities, their home, remains a priority. For facility residents admitted to or seen at a hospital for COVID-19, the residents shall be allowed to return to the facility as long as the

facility can follow the approved CDC recommendations for transmission-based precautions. If the residents must temporarily go to other facilities, such as an alternate care site, every effort must be made by the receiving and original facilities to transfer the residents back to their original facility as soon as possible, such as when transmission-based precautions can be discontinued if the original facility cannot effectively initiate these precautions prior. A negative COVID-19 test shall not be required prior to a resident's return to a facility.

7. All staff at nursing facilities, assisted living facilities, rest residential facilities, and intermediate care facilities for persons with intellectual disabilities must complete trainings developed by the Public Health Authority by April 20, 2020.

8. In addition to the trainings required by paragraph 7, above, all medical directors for long-term care facilities must complete additional trainings developed by the Public Health Authority by April 27, 2020.

B. NOTARIZATION

1. Effective April 15, 2020 at 8:00 p.m. E.D.T., any notarial act required under Delaware law is authorized to be performed, in addition to methods authorized under current law, by utilizing audio-visual technology (remote notarization) provided that the following conditions are met:

    a. The notarization is performed by a licensed Delaware attorney who is in good standing with the Supreme Court of Delaware (an "Authorized Notarial Officer");

    b. The Authorized Notarial Officer and all persons whose signatures are being notarized shall be physically located in Delaware (but each may be in different

physical locations), and the signer(s) shall affirmatively represent this fact during the video conference;

c. The Authorized Notarial Officer shall determine that the person whose signature is being notarized is the person whose true signature is on the instrument: 1) by personal knowledge of identity, or 2) by examining one document that is satisfactory evidence of identity as provided in 29 *Del. C.* §4321(21) (an "Identity Document"). For documents notarized in relation to a real estate transaction or conveyance of real property, the attorney overseeing the transaction shall verify the signer's identity in one of the following ways: 1) by personal knowledge of identity; 2) by examining two Identity Documents; or 3) by examining one Identity Document and one document postmarked or dated within 60 days from the date of the notarization (i.e. utility bill, cable bill, voter registration card, etc.) that includes the signer's name and address as stated on the Identity Document;

   i. The verification of identity shall occur during the video conference; not merely by transmitting the identity evidence before or after the video conference; and

d. The Authorized Notarial Officer is able to communicate in real-time by any available video conferencing method where the Authorized Notarial Officer can actually see, hear and communicate with the person whose signature is being notarized.

2. Any witnessing, as required under Delaware law, is authorized to be performed, in addition to methods authorized under current law, by utilizing audio-visual technology provided that the following conditions are met:

a. The witnessing is overseen by an Authorized Notarial Officer;

b. The Authorized Notarial Officer is able to verify the identifications of the witnesses as prescribed herein under §1(c); and

c. The Authorized Notarial Officer is able to communicate in real-time by any available video conferencing method where the Authorized Notarial Officer can actually see, hear and communicate with the witnesses and the person whose signature is being witnessed (whether by hand or electronically).

3. The Authorized Notarial Officer shall notarize and a witness, when required by Delaware law, shall witness a legible copy or counterpart of the signed documents transmitted by mail, fax or electronic means.

4. The Authorized Notarial Officer may repeat the notarization and the witness, when required by Delaware law, may repeat the witnessing of the original signed document (except for a Last Will and Testament or Codicil) at a later date but as of the date of execution.

5. A photocopy or electronic copy of any fully executed legal document (except a Last Will and Testament or a Codicil) signed during the State of Emergency will have the same effect as an original for all deeds, easements, mortgages, Durable Powers of Attorney, Powers of Attorney for Health-Care, Advance Health-Care Directives, trust instruments, and any other legal document witnessed or notarized by a Delaware notarial officer. A Last Will and Testament or Codicil containing all original signed counterparts shall be deemed the sole "original" copy.

6. All Delaware governmental offices (including County and municipal government offices specifically, but not limited to, the Recorder of Deeds and the Register of Wills) shall

immediately waive the requirement of demanding an "original" wet signature for documents (excluding a Last Will and Testament) prepared in accordance with this Modification.

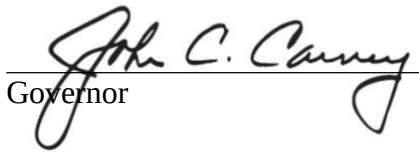
7. A Recorder of Deeds shall accept for recording any document presented that has been notarized in accordance with this Modification or the laws of the state in which the notarial acknowledgment was taken, including those documents notarized via remote online notarization, provided the presented document conforms with all other recording requirements. The Recorder of Deeds shall accept any document notarized according to this Modification to the State of Emergency. The fact that such a notarized document is presented to the Recorder of Deeds after the State of Emergency has been lifted does not affect the validity of the document.
8. The Authorized Notarial Officer shall remain obligated to complete a Certificate of Notarial Act pursuant to 29 Del. C. §§ 4327, 4328. In addition, the document being notarized and/or witnessed shall contain a statement or a separate certification that it was "notarized and/or witnessed pursuant to the 11th Modification of the Declaration of a State of Emergency for the State of Delaware Due to a Public Health Threat approved on April 15, 2020, and provide the Authorized Notarial Officer's Name and Bar Number/License Number."
9. Unless expressly stated herein, this Modification does not alter or modify any other provisions of Title 29, Chapter 43 of the Delaware Code. This Modification does not modify or repeal the provisions and requirements related to Delaware electronic notaries public or electronic notarizations under 29 Del. C. § 4301 *et seq.*

10. This Modification does not alter or modify any criminal or civil penalty for any act constituting a false or fraudulent notarization by an Authorized Notarial Officer.
11. Documents executed pursuant to this Modification shall remain effective following the termination of the COVID-19 State of Emergency declaration.

C. MISCELLANEOUS

1. **Enforcement**. This Order has the force and effect of law. Any failure to comply with the provisions contained in a Declaration of a State of Emergency or any modification to a Declaration of the State of Emergency constitutes a criminal offense. 20 Del. C. §§ 3115(b); 3116(9); 3122; 3125. State and local law enforcement agencies are authorized to enforce the provisions of any Declaration of a State of Emergency.

APPROVED this 15th day of April 2020 at 9:00 a.m.



Governor