**Remote Notarization – FAQ**

**Q. Where do I find the Emergency Rule and Guidance about remote notarization**?

A. The Emergency Rule is [**HERE**](https://www.vermontattorneystitle.com/wp-content/uploads/2020/03/Emergency-Rules-Remote-Notary-FINAL-2020-0324.pdf). The Guidance is [**HERE**](https://sos.vermont.gov/media/mixppvcq/emergency-rules-remote-notary-final-2020-0324.pdf).

Prior to undertaking remote notarization, a notary must know the requirements and procedures set forth in the Rule and Guidance. The notary must also comply with VATC protocol and underwriting requirements issued in connection with remote notarization.

**Q. Can remote notarization be used for any document that require notarization?**

A. Yes, however, remote notarization may not be for everyone. Additionally:

1. VATC strongly recommends limiting the use of remote notarization to Powers of Attorney (POA) only, if possible. The reasons for that will likely become obvious once the process is undertaken. Logistically, remote notarizing of a POA (typically a one-page record) will be easier to manage than say notarizing multiple documents or a 15 page mortgage deed (which might require initialing each page).

2. If lender documents are involved, you must ensure that the lender will accept records (e.g. POA or documents pertaining to the loan) that are notarized remotely. Many lenders, or their investors, limit or prohibit use of powers of attorney and/or remote notarization; and

3. Check the firm’s Professional Liability Policy to see if it contains an exclusion for coverage in this area. Note: Per [**published statement**](https://myemail.constantcontact.com/Agent-Alert---Remote-Online-Notarization---Check-Your-Professional-Liability-Policy--and-Errors-and-Omissions-Policy.html?soid=1114863943135&aid=pexsKlt8QTQ), CATIC has confirmed that policies issued through the CATIC LPL Program with Hanover include notary services and provide coverage if documents are notarized in compliance with State process.

**Q. I am required to record the audio/visual session and save the recording for 7 years. How do I do that?**

A. There are many available methods. Your colleagues have shared some of them by e-mail. In the meantime, CATIC has assembled a list of 3rd party vendors [**HERE**](https://www.vermontattorneystitle.com/wp-content/uploads/2020/03/Tech-Vendor-List-03302020.pdf). Again, however, this may not be for everyone.

**Q. How does workflow happen and what should be sent for recording.**

A. See VATC protocol [**HERE**](https://files.constantcontact.com/820a2449001/bad2dc3c-82f1-4a39-888b-9a6fd848959f.pdf).

**Q. What do these terms mean?**

1. RECORD is a term used by the Secretary of State in the Rules and the Guidance. It means the document or instrument that is being signed and acknowledged.

2. WET INK is the original signature of the signer on a record (e.g. not a copy of what the signer signed).

3. ORIGINAL RECORD: As defined in the Guidance, an original record can be either: (a) the record containing the signer’s “wet ink” signature to which the notary affixes their “wet ink” certification (which can be a separate page attached to the signer’s document); OR (b) a true and complete version of the record signed by the signer (either “wet ink” or “dry ink”) and sent to the notary, to which the notary affixes their “wet ink” certificate.

4. SECURE COMMUNICATION LINK: Any communication technology that allows the signer and the notary public to see and hear each other simultaneously. There are no other security requirements.

**Q. What form of notarial certificate should be used?**

A. VATC strongly encourages using a separate page, Vermont Certificate [**HERE**](https://files.constantcontact.com/820a2449001/0b64ac9c-1e5b-4ce9-b504-1d262d67e6da.docx) for all remote notarizations (as opposed to doing certification in the record). The new Vermont Certificate is akin to the so-called “California Acknowledgment”, a standalone page, which you may have seen before. For each record: print the certificate; complete it and sign it; attach it to the record; send the record and Certificate as the original record for recording.

You can, however, reproduce and execute the full Vermont Certificate into the record and complete it there.

Remember that the format for an acknowledgement in a Representative Capacity varies from an acknowledgement in an individual capacity.

**Q. If not personally known to the notary, the Rule requires two different types of ID. What evidence can I rely on?**

A. One form of ID must be a “passport, driver’s license, government-issued nondriver ID card, or another form of government ID with the signature or a photograph of the individual”, which is current or expired within the past 3 years.

The second form of ID must assure the notary of the signer’s identity. Examples include: tax forms, utility bill, library card, picture badge, corporate identification, credit card or vital record.

**Q. Can a Vermont notary acknowledge the signature of a person who is not in Vermont.**

A. No. The Rule requires that both the notary and the signer be located in Vermont.

**Q. Can I remotely witness a POA while I remotely take the acknowledgement?**

A. At the present time NO, you cannot because 14 VSA §3503 requires that the witness be “in the presence of” the signer. However, the Legislature is expected to amend by statute by emergency legislation to add subsection (f)(1) such that *while the Emergency Rules are in effect*, the witness shall be considered “in the presence of” the signer whether or not the witness is physically present with the signer.

VATC will advise you when the Governor signs the bill to enact this new statutory provision.

**Q. If a record was remote notarized out of state, does reciprocity apply such that I can accept that record if it was executed in compliance with the remote notarization requirements of the foreign jurisdiction.**

A. While Vermont law allows for reciprocity, because the process of remote notarization is new, VATC strongly discourages the use of records executed via remote notarization in a foreign jurisdiction. However, on a case by case basis we will consider approving the record if a statement is obtained from a licensed attorney in the foreign jurisdiction that the record, as written and as acknowledged, complies with the regulations of the foreign jurisdiction including for remote notarization.

**Q. What about scammers?**

A. Scammers are omnipresent and ever dangerous but, during this crisis, they are even more dangerous.

If wires are involved in the transaction, as ALWAYS, discuss wiring protocol with your client such that phone calls are undertaken prior them to wiring.