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**OFFICE OF THE LIEUTENANT GOVERNOR
ALASKA**

MEMORANDUM

TO: Kady Levale, Office of the Lieutenant Governor
465.3509

FROM: April Simpson, Office of the Lieutenant Governor 
465.4081

DATE: December 2, 2020

RE: Filed Permanent Regulations: Office of the Lieutenant Governor

Office of the Lieutenant Governor Regulations re: remote online notarization
(6 AAC 88)

Attorney General File:	2020200562
Regulation Filed:	12/02/2020
Effective Date:	01/01/2021
Print:	237, April 2021

cc with enclosures: Harry Hale, Department of Law
Judy Herndon, LexisNexis

ORDER ADOPTING CHANGES TO REGULATIONS
OF THE OFFICE OF THE LIEUTENANT GOVERNOR

The attached six pages of regulations, dealing with 6 AAC 88 Notarizations specifically notarial acts performed for remotely-located individuals, are adopted and certified to be a correct copy of the regulation changes that the Office of the Lieutenant Governor adopts under the authority of AS 44.50.072, AS 44.50.075 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

In considering public comments, the Office of the Lieutenant Governor paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes adopted under this order take effect on the 30th day after they have been filed by the lieutenant governor as provided in AS 44.62.180.

Date: _____

Digitally signed by Joshua M.
Applebee
Date: 2020.12.01 14:36:58 -09'00'
Joshua M. Applebee
Josh Applebee, Chief of Staff, Office of the
Lieutenant Governor

April Simpson for

FILING CERTIFICATION

I, Kevin Meyer, Lieutenant Governor for the State of Alaska, certify that on

December 2, 2020, at 2:49 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

for Kevin Meyer
Lieutenant Governor

Effective: January 1, 2021

Register: 237, April 2021

**LIMITED DELEGATION OF AUTHORITY
FOR ADOPTING REGULATIONS**

Under as 44.17.010, the authority and responsibility for adopting regulations of the Office of the Lieutenant Governor under the Alaska Administrative Procedure Act during the period November 25, 2020, through January 1, 2021, is delegated to Josh Applebee, Chief of Staff.

Date: November 24, 2020

A handwritten signature in black ink that reads "Kevin Meyer". The signature is written in a cursive style and is positioned above a horizontal line.

Kevin Meyer, Lieutenant Governor

State of Alaska
Anchorage

FOR DELEGATION OF THE LIEUTENANT GOVERNOR'S AUTHORITY

**I, KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA,
designate the following state employees to perform the Administrative Procedures Act
filing functions of the Office of the Lieutenant Governor:**

**Josh Applebee, Chief of Staff
Kady Levale, Notary Administrator
April Simpson, Regulations and Initiatives Specialist**

**IN TESTIMONY WHEREOF, I have
signed and affixed the Seal of the State of
Alaska, in Juneau, on December 11th,
2018.**



Kevin Meyer
.....

**KEVIN MEYER
LIEUTENANT GOVERNOR**

6 AAC is amended by adding a new chapter to Part 7 to read:

Chapter 88. Notarizations.

Section

- 10. Applicability
- 20. Application fee
- 30. Standards for communication technology
- 40. Standards for identity proofing
- 50. Form of notarial certificates for remote notarial acts
- 990. Definitions

6 AAC 88.010. Applicability. This chapter applies to persons performing notarial acts established under AS 44.50. (Eff. 1 / 1 / 2021, Register 237)

Authority: AS 44.50.033 AS 44.50.072

6 AAC 88.020. Application fee. (a) The application fee for commission as a notary public is \$40.

(b) In addition to the application fee under (a) of this section, the application fee to perform notarial acts using communication technology for remotely located individuals is \$100 for an initial notary public commission. If a notary public is commissioned under AS 44.50.010 at the time the notary public applies to perform remote notarial acts as described in this subsection, that notary public shall pay an application fee of \$25 for each remaining year of the notary public's commission. (Eff. 1 / 1 / 2021, Register 237)

Authority: AS 44.50.033 AS 44.50.072

6 AAC 88.030. Standards for communication technology. (a) Communication technology must provide for synchronous audio-video feeds of sufficient video resolution and audio clarity to enable the notary public and remotely located individual to see and speak with each other in real time. The process must provide a means for the notary public to reasonably confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature.

(b) Communication technology must provide reasonable security measures to prevent unauthorized access to

- (1) the live transmission of the audio-video feeds;
- (2) the methods used to perform the identity proofing; and
- (3) the electronic record that is the subject of the remote online notarization.

(c) If a remotely located individual leaves the session before the completion of the identity verification, the individual must restart the identity proofing process from the beginning.

(Eff. 1 / 1 / 2021 , Register 237)

Authority: AS 44.50.072 AS 44.50.075

6 AAC 88.040. Standards for identity proofing. (a) If a notary public does not have personal knowledge or satisfactory evidence of the identity of a remotely located individual under (d) of this section, the notary public must reasonably verify the individual's identity through a multi-factor authentication procedure as provided in (a) - (c) of this section. The procedure must analyze the individual's identification credential that is the subject of remote presentation against trusted third-party data sources, bind the individual's identity to the individual following a successful knowledge-based authentication assessment, and permit the

notary public to visually compare the identification credential and the individual. Credential analysis and identity proofing must be performed by a reputable third party that has provided evidence to the notary public of its ability to satisfy the requirements of this chapter.

(b) Credential analysis must use public or private data sources to confirm the validity of the identification credential that is the subject of remote presentation by a remotely located individual and must, at a minimum,

(1) use automated software processes to aid the notary public in verifying the identity of each remotely located individual;

(2) require the identification credential to pass an authenticity test, consistent with sound commercial practices, that uses appropriate technologies to confirm the integrity of visual, physical, or cryptographic security features, and to confirm that the identification credential is not fraudulent or inappropriately modified;

(3) use information held or published by the issuing source or an authoritative source, as available and consistent with sound commercial practices, to confirm the validity of personal details and identification credential details; and

(4) enable the notary public to visually compare for consistency the information and photograph on the identification credential and the remotely located individual as viewed by the notary public in real time through communication technology.

(c) Identity proofing may be performed by means of a knowledge-based authentication assessment. The assessment is successful if it meets the following requirements:

(1) the remotely located individual must answer a quiz of a minimum of five questions related to the individual's personal history or identity formulated from public or private data sources;

- (2) each question must have a minimum of five possible answer choices;
 - (3) at least 80 percent of the questions must be answered correctly;
 - (4) all questions must be answered within two minutes;
 - (5) if the remotely located individual fails the first attempt, the individual may retake the quiz one time within 24 hours;
 - (6) during a retake of the quiz, a minimum of 40 percent of the prior questions must be replaced;
 - (7) if the remotely located individual fails the second attempt, the individual is not allowed to retry with the same online notary public until at least 24 hours after the second failed attempt; and
 - (8) the notary public may not be able to see or record the questions or answers.
- (d) The multi-factor authentication requirements in (a) - (c) of this section do not apply if
- (1) the notary public has personal knowledge of the identity of the individual; or
 - (2) the individual is identified by oath or affirmation of a credible witness subject to the following requirements:
- (A) to be a credible witness, the witness must have personal knowledge of the remotely located individual;
 - (B) the notary public must have personal knowledge of the credible witness or must have satisfactory evidence of the identity of the credible witness through verification of the witness's identity by multi-factor authentication in accordance with (a) - (c) of this section;
 - (C) a credible witness may be outside the physical presence of the notary public or remotely located individual if the notary public, credible witness, and remotely

located individual can communicate by using communication technology.

(Eff. 1 / 1 / 2021 , Register 237)

Authority: AS 44.50.072 AS 44.50.075

6 AAC 88.050. Form of notarial certificates for remote notarial acts. A notarial certificate for a remote online notarization is sufficient if it is substantially in a form prescribed by the laws and regulations of the state and conforms with AS 44.50.075(c) by including a statement that the notarization was performed using communication technology.

(Eff. 1 / 1 / 2021 , Register 237)

Authority: AS 44.50.072 AS 44.50.075

6 AAC 88.990. Definitions. In this chapter, unless the context requires otherwise,

- (1) “credential analysis” has the meaning given in AS 44.50.075(b)(1)(C)(ii);
- (2) “electronic record” has the meaning given in AS 09.80.190;
- (3) “identification credential” means a non-expired passport, driver's license, or form of government-issued identification document that contains the signature and photograph of the individual;
- (4) “multi-factor authentication” means a security system that requires more than one method of authentication from independent categories of credentials to verify the user's identity for a login or other transaction;
- (5) “notarial certificate” means the portion of a notarized document that is completed by a notary public and that bears the notary public's signature, seal, and language as required by law;

(6) "person" has the meaning given in AS 01.10.060;

(7) "personal knowledge" means that the individual appearing before the notary public is known to the notary public through dealings sufficient to provide reasonable certainty that the individual has the identity claimed;

(8) "real time" means the actual span of uninterrupted, simultaneous communication using audio-video feeds during which all parts of an online notarial act occur excluding issues or buffering that does not materially affect the substantive communication between the notary public and the individual;

(9) "remote online notarization" or "remote notarial act" means a notarial act performed by means of communication technology under this chapter;

(10) "remote presentation" means transmission to a notary public through communication technology of an image of a remotely located individual's identification credential that is of sufficient quality to enable the notary public to reasonably identify the remotely located individual and to perform credential analysis. (Eff. 1 / 1 / 2021, Register 237)

Authority: AS 44.50.072 AS 44.50.075