

NOTARIAL ACTS

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SECTION 47. Section 48 of this 2020 special session Act is added to and made a part of ORS chapter 194.

SECTION 48. (1) As used in this section:

(a) “Communication technology” means an electronic device or process that:

(A) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(B) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a visual, hearing or speech impairment.

(b) “Foreign state” means a jurisdiction other than the United States, a state or a federally recognized Indian tribe.

(c) “Identity proofing” means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(d) “Outside the United States” means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands and any territory, insular possession or other location subject to the jurisdiction of the United States.

(e) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection (3) of this section.

(2) A remotely located individual may comply with ORS 194.235 by using communication technology to appear before a notary public.

(3) A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

(a) The notary public:

(A) Has personal knowledge under ORS 194.240 (1) of the identity

1 of the remotely located individual;

2 (B) Has satisfactory evidence of the identity of the remotely located
3 individual by a verification on oath or affirmation from a credible
4 witness appearing before and identified by the notary public as a re-
5 motely located individual under this section or in the physical pres-
6 ence of the notary public under ORS 194.240 (2); or

7 (C) Has obtained satisfactory evidence of the identity of the re-
8 motely located individual by using at least two different types of
9 identity proofing;

10 (b) The notary public is reasonably able to confirm that a record
11 before the notary public is the same record in which the remotely lo-
12 cated individual made a statement or on which the individual executed
13 a signature;

14 (c) The notary public, or a person acting on behalf of the notary
15 public, creates an audiovisual recording of the performance of the
16 notarial act; and

17 (d) For a remotely located individual who is located outside the
18 United States:

19 (A) The record:

20 (i) Is to be filed with or relates to a matter before a public official
21 or court, governmental entity or other entity subject to the jurisdic-
22 tion of the United States; or

23 (ii) Involves property located in the territorial jurisdiction of the
24 United States or involves a transaction substantially connected with
25 the United States; and

26 (B) The act of making the statement or signing the record is not
27 prohibited by the foreign state in which the remotely located individ-
28 ual is located.

29 (4) If a notarial act is performed under this section, the certificate
30 of notarial act required by ORS 194.280 and the short form certificate
31 provided in ORS 194.285 must indicate that the notarial act was per-

1 **formed using communication technology.**

2 **(5) A short form certificate provided in ORS 194.285 for a notarial**
3 **act subject to this section is sufficient if it:**

4 **(a) Complies with rules adopted under subsection (8)(a) of this sec-**
5 **tion; or**

6 **(b) Is in the form provided in ORS 194.285 and contains a statement**
7 **substantially as follows: “This notarial act involved the use of com-**
8 **munication technology.”**

9 **(6) A notary public, a guardian, conservator, trustee or agent of a**
10 **notary public, or a personal representative of a deceased notary public**
11 **shall retain the audiovisual recording created under subsection (3)(c)**
12 **of this section or cause the recording to be retained by a repository**
13 **designated by or on behalf of the person required to retain the re-**
14 **ording. Unless a different period is required by rule adopted under**
15 **subsection (8)(d) of this section, the recording must be maintained for**
16 **a period of at least 10 years after the recording is made.**

17 **(7) Before a notary public performs the notary public’s initial**
18 **notarial act under this section, the notary public shall notify the**
19 **Secretary of State that the notary public will be performing notarial**
20 **acts with respect to remotely located individuals and identify the**
21 **technologies the notary public intends to use. If the Secretary of State**
22 **has established standards under subsection (8) of this section or ORS**
23 **194.360 for approval of communication technology or identity proofing,**
24 **the communication technology and identity proofing used by the**
25 **notary public must conform to those standards.**

26 **(8) In addition to adopting rules under ORS 194.360, the Secretary**
27 **of State may adopt rules under this section regarding the performance**
28 **of a notarial act. The rules may:**

29 **(a) Prescribe the means of performing a notarial act involving a**
30 **remotely located individual using communication technology;**

31 **(b) Establish standards for communication technology and identity**

1 **proofing;**

2 (c) **Establish requirements or procedures to approve providers of**
3 **communication technology and the process of identity proofing; and**

4 (d) **Establish standards and a period for the retention of an audi-**
5 **ovisual recording created under subsection (3)(c) of this section.**

6 (9) **Before adopting, amending or repealing a rule governing the**
7 **performance of a notarial act with respect to a remotely located indi-**
8 **vidual, the Secretary of State shall consider:**

9 (a) **The most recent standards regarding the performance of a**
10 **notarial act with respect to a remotely located individual promulgated**
11 **by national standard-setting organizations and the recommendations**
12 **of the National Association of Secretaries of State;**

13 (b) **Standards, practices and customs of other jurisdictions that**
14 **have laws substantially similar to this section; and**

15 (c) **The views of governmental officials and entities and other in-**
16 **terested persons.**

17 **SECTION 49.** ORS 194.225 is amended to read:

18 194.225. (1) A notarial officer may perform a notarial act authorized by
19 this chapter or by law of this state other than this chapter.

20 (2) A notarial officer may not perform a notarial act with respect to a
21 record to which the officer or the officer's spouse is a party, or in which
22 either the officer or the officer's spouse has a direct beneficial interest. A
23 notarial act performed in violation of this subsection is voidable.

24 (3) **A notarial officer may certify that a tangible copy of an elec-**
25 **tronic record is an accurate copy of the electronic record.**

26 **SECTION 50.** ORS 194.225, as amended by section 49 of this 2020 special
27 session Act, is amended to read:

28 194.225. (1) A notarial officer may perform a notarial act authorized by
29 this chapter or by law of this state other than this chapter.

30 (2) A notarial officer may not perform a notarial act with respect to a
31 record to which the officer or the officer's spouse is a party, or in which

1 either the officer or the officer's spouse has a direct beneficial interest. A
2 notarial act performed in violation of this subsection is voidable.

3 [(3) *A notarial officer may certify that a tangible copy of an electronic re-*
4 *cord is an accurate copy of the electronic record.*]

5 **SECTION 51.** ORS 194.290 is amended to read:

6 194.290. (1) The official stamp of a notary public must:

7 [(1)] (a) Include the notary public's name, jurisdiction, commission expi-
8 ration date and other information required by the Secretary of State by rule;
9 and

10 [(2)] (b) Be a legible imprint capable of being copied together with the
11 record to which it is affixed or attached or with which it is logically asso-
12 ciated.

13 **(2) The official stamp of a notary public is an official notarial seal**
14 **for all purposes under the law of this state.**

15 **SECTION 52.** ORS 194.290, as amended by section 51 of this 2020 special
16 session Act, is amended to read:

17 194.290. [(1)] The official stamp of a notary public must:

18 [(a)] (1) Include the notary public's name, jurisdiction, commission expi-
19 ration date and other information required by the Secretary of State by rule;
20 and

21 [(b)] (2) Be a legible imprint capable of being copied together with the
22 record to which it is affixed or attached or with which it is logically asso-
23 ciated.

24 [(2) *The official stamp of a notary public is an official notarial seal for all*
25 *purposes under the law of this state.*]

26 **SECTION 53.** ORS 194.305 is amended to read:

27 194.305. (1) A notary public may select one or more tamper-evident tech-
28 nologies to perform notarial acts with respect to electronic records. A person
29 may not require a notary public to perform a notarial act with respect to
30 an electronic record with a technology that the notary public has not se-
31 lected.

1 (2) Before a notary public performs the notary public’s initial notarial act
 2 with respect to an electronic record, a notary public shall notify the Secre-
 3 tary of State that the notary public will be performing notarial acts with
 4 respect to electronic records and identify the technology the notary public
 5 intends to use. If the Secretary of State, by rule, has established standards
 6 pursuant to ORS 194.360 for approval of technology, the technology must
 7 conform to the standards. If the technology conforms to the standards, the
 8 Secretary of State shall approve the use of the technology.

9 **(3) A county clerk may accept for recording a tangible copy of an**
 10 **electronic record containing a notarial certificate as satisfying any**
 11 **requirement that a record accepted for recording be an original, if the**
 12 **notarial officer executing the notarial certificate certifies that the**
 13 **tangible copy is an accurate copy of the electronic record.**

14 **SECTION 54.** ORS 194.305, as amended by section 53 of this 2020 special
 15 session Act, is amended to read:

16 194.305. (1) A notary public may select one or more tamper-evident tech-
 17 nologies to perform notarial acts with respect to electronic records. A person
 18 may not require a notary public to perform a notarial act with respect to
 19 an electronic record with a technology that the notary public has not se-
 20 lected.

21 (2) Before a notary public performs the notary public’s initial notarial act
 22 with respect to an electronic record, a notary public shall notify the Secre-
 23 tary of State that the notary public will be performing notarial acts with
 24 respect to electronic records and identify the technology the notary public
 25 intends to use. If the Secretary of State, by rule, has established standards
 26 pursuant to ORS 194.360 for approval of technology, the technology must
 27 conform to the standards. If the technology conforms to the standards, the
 28 Secretary of State shall approve the use of the technology.

29 *[(3) A county clerk may accept for recording a tangible copy of an electronic*
 30 *record containing a notarial certificate as satisfying any requirement that a*
 31 *record accepted for recording be an original, if the notarial officer executing*

1 *the notarial certificate certifies that the tangible copy is an accurate copy of*
2 *the electronic record.]*

3 **SECTION 55. A tangible copy of an electronic record containing a**
4 **notarial certificate that is accepted for recording by a county clerk**
5 **before the effective date of this 2020 special session Act satisfies any**
6 **requirement that the record be an original, if the notarial officer ex-**
7 **ecuting the notarial certificate certifies that the tangible copy is an**
8 **accurate copy of the electronic record.**

9 **SECTION 56.** ORS 93.810 is amended to read:

10 93.810. The following are subjects of validating or curative Acts applica-
11 ble to this chapter:

- 12 (1) Evidentiary effect and recordation of conveyances before 1854.
- 13 (2) Evidentiary effect and recordation of certified copies of deeds issued
14 by the State Land Board before 1885 where the original deed was lost.
- 15 (3) Defective acknowledgments of married women to conveyances before
16 1891.
- 17 (4) Foreign instruments executed before 1903.
- 18 (5) Deeds of married women before 1907, validity; executed under power
19 of attorney and record as evidence.
- 20 (6) Conveyances by reversioners and remainderpersons to life tenant.
- 21 (7) Decrees or judgments affecting lands in more than one county.
- 22 (8) Irregular deeds and conveyances; defective acknowledgments; irreg-
23 ularities in judicial sales; sales and deeds of executors, personal represen-
24 tatives, administrators, conservators and guardians; vested rights arising by
25 adverse title; recordation.
- 26 (9) Defective acknowledgments.
- 27 (10) Title to lands from or through aliens.
- 28 (11) An instrument that is presented for recording as an electronic image
29 or by electronic means and that is recorded before June 16, 2011.
- 30 (12) **A tangible copy of an electronic record containing a notarial**
31 **certificate that is accepted for recording by a county clerk before the**

1 **effective date of this 2020 special session Act.**

2 **SECTION 57.** ORS 93.810, as amended by section 56 of this 2020 special
3 session Act, is amended to read:

4 93.810. The following are subjects of validating or curative Acts applica-
5 ble to this chapter:

6 (1) Evidentiary effect and recordation of conveyances before 1854.

7 (2) Evidentiary effect and recordation of certified copies of deeds issued
8 by the State Land Board before 1885 where the original deed was lost.

9 (3) Defective acknowledgments of married women to conveyances before
10 1891.

11 (4) Foreign instruments executed before 1903.

12 (5) Deeds of married women before 1907, validity; executed under power
13 of attorney and record as evidence.

14 (6) Conveyances by reversioners and remainderpersons to life tenant.

15 (7) Decrees or judgments affecting lands in more than one county.

16 (8) Irregular deeds and conveyances; defective acknowledgments; irreg-
17 ularities in judicial sales; sales and deeds of executors, personal represen-
18 tatives, administrators, conservators and guardians; vested rights arising by
19 adverse title; recordation.

20 (9) Defective acknowledgments.

21 (10) Title to lands from or through aliens.

22 (11) An instrument that is presented for recording as an electronic image
23 or by electronic means and that is recorded before June 16, 2011.

24 *[(12) A tangible copy of an electronic record containing a notarial certificate*
25 *that is accepted for recording by a county clerk before the effective date of this*
26 *2020 special session Act.]*

27 **SECTION 58.** ORS 194.400 is amended to read:

28 194.400. (1) The fee that a notary public may charge for performing a
29 notarial act may not exceed \$10 per notarial act, **except that a notary**
30 **public may charge a fee not to exceed \$25 per notarial act for a nota-**
31 **rial act performed under section 48 of this 2020 special session Act.**

1 (2) A notary public may charge an additional fee for traveling to perform
2 a notarial act if:

3 (a) The notary public explains to the person requesting the notarial act
4 that the fee is in addition to a fee specified in subsection (1) of this section
5 and is in an amount not determined by law; and

6 (b) The person requesting the notarial act agrees in advance upon the
7 amount of the additional fee.

8 (3) If a notary public charges fees under this section for performing
9 notarial acts, the notary public shall display, in English, a list of the fees
10 the notary public will charge.

11 (4) A notary public who is employed by a private entity may enter into
12 an agreement with the entity under which fees collected by the notary public
13 under this section are collected by and accrue to the entity.

14 (5) A public body as defined in ORS 174.109 may collect the fees described
15 in this section for notarial acts performed in the course of employment by
16 notaries public who are employed by the public body.

17 **SECTION 59.** ORS 194.400, as amended by section 58 of this 2020 special
18 session Act, is amended to read:

19 194.400. (1) The fee that a notary public may charge for performing a
20 notarial act may not exceed \$10 per notarial act[, *except that a notary public*
21 *may charge a fee not to exceed \$25 per notarial act for a notarial act performed*
22 *under section 48 of this 2020 special session Act*].

23 (2) A notary public may charge an additional fee for traveling to perform
24 a notarial act if:

25 (a) The notary public explains to the person requesting the notarial act
26 that the fee is in addition to a fee specified in subsection (1) of this section
27 and is in an amount not determined by law; and

28 (b) The person requesting the notarial act agrees in advance upon the
29 amount of the additional fee.

30 (3) If a notary public charges fees under this section for performing
31 notarial acts, the notary public shall display, in English, a list of the fees

1 the notary public will charge.

2 (4) A notary public who is employed by a private entity may enter into
3 an agreement with the entity under which fees collected by the notary public
4 under this section are collected by and accrue to the entity.

5 (5) A public body as defined in ORS 174.109 may collect the fees described
6 in this section for notarial acts performed in the course of employment by
7 notaries public who are employed by the public body.

8

9 **STATE LAW EXCEPTIONS AND ALTERNATIVES**

10

11 **SECTION 60. (1) As used in this section:**

12 (a) **“Executive session” has the meaning given that term in ORS**
13 **192.610.**

14 (b) **“Governor’s declaration” means the declaration of a state of**
15 **emergency issued by the Governor on March 8, 2020, and any extension**
16 **of the declaration.**

17 (c) **“Municipal corporation” has the meaning given that term in**
18 **ORS 294.311 and includes the governing body of the municipal corpo-**
19 **ration.**

20 (d) **“Public body” means any local public body that is included in**
21 **the definition of “public body” under ORS 192.610 and includes the**
22 **governing body of the public body.**

23 (2)(a) **This section applies during the period in which the Governor’s**
24 **declaration is in effect and for the succeeding two weeks after the date**
25 **on which the declaration is no longer in effect.**

26 (b) **The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et**
27 **seq.) preempts any conflicting provision of law included in this section.**

28 (3) **Notwithstanding ORS 192.640, a public body may hold a meeting**
29 **as defined in ORS 192.610 to consider or take action related to the**
30 **COVID-19 pandemic upon such notice as the public body deems ap-**
31 **propriate in the circumstances.**