

A BILL

24-457

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA



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To amend the Revised Uniform Law on Notarial Acts of 2018 to authorize a notary public to certify that a paper copy of an electronic record is an accurate copy of that record; to accept a paper copy of an electronic record that is certified by a notarial officer; and to perform a notarial act for an individual who is not physically present before the notary public, including an individual who is outside the District of Columbia but within the United States and an individual who is outside the United States, through the use of synchronous communication technology to verify the identity of the remote individual, evidenced by an audio-visual recording, or by remote administration of oaths and remote notarization of tangible records evidenced by an audio-visual recording.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this

act may be cited as the “Revised Uniform Law on Notarial Acts Amendment Act of 2022”.

Sec. 2. The Revised Uniform Law on Notarial Acts of 2018, effective Dec. 21, 2018 (D.C. Law 22-189; D.C. Official Code § 1-1231.01 *et seq.*), is amended as follows:

(a) Section 3 is amended by striking the phrase “sections20(i),” and replacing it with the phrase “sections 14a, 20(i),” in its place.

(b) Section 4 is amended by adding a new subsection (d) to read as follows:

“(d) A notarial officer may certify that a tangible copy of an electronic record is an accurate copy of the electronic record.”

29 (c) Section 6 is amended by striking the phrase “before the notarial officer.” and inserting
30 the phrase “before the notarial officer, including an appearance that conforms with section 14a.”
31 in its place.

32 (d) A new section 14a is added to read as follows:

33 “Sec. 14a. Notarial act performed for remotely located individual.

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35 “(a) A remotely located individual may comply with section 6 by using communication
36 technology to appear before a notary public.

37 “(b) A notary public located in the District may use communication technology to
38 perform a notarial act for a remotely located individual if:

39 “(1) The notary public:

40 “(A) Has personal knowledge under Section 6(a) of the identity of the
41 remotely located individual;

42 “(B) Has satisfactory evidence of the identity of the remotely located
43 individual by oath or affirmation from a credible witness appearing before the notary public
44 under Section 6(b) or this section; or

45 “(C) Has obtained satisfactory evidence of the identity of the remotely
46 located individual by using at least two different types of identity proofing;

47 “(2) The notary public is able reasonably to confirm that a record before the
48 notary public is the same record in which the remotely located individual made a statement or on
49 which the individual executed a signature;

50 “(3) The notary public, or a person acting on behalf of the notary public, creates
51 an audio-visual recording of the performance of the notarial act; and

52 “(4) For a remotely located individual located outside a state:

53 “(A) The record:

54 “(i) Is to be filed with or relates to a matter before a public official
55 or court, governmental entity, or other entity subject to the jurisdiction of a state; or

56 “(ii) Involves property located in the territorial jurisdiction of the
57 United States or involves a transaction substantially connected with a state; and

58 “(B) The act of making the statement or signing the record is not
59 prohibited by the foreign state in which the remotely located individual is located.

60 “(c) A notary public located in the District may use communication technology under
61 subsection (b) to take an acknowledgment of a signature on a tangible record physically present
62 before the notary public if the record is displayed to and identified by the remotely located
63 individual during the audio-visual recording under subsection (b)(3) of this section.

64 “(d) The requirement under subsection (b)(2) of this section for the performance of a
65 notarial act with respect to a tangible record not physically present before the notary public is
66 satisfied if:

67 “(1) The remotely located individual:

68 “(A) During the audio-visual recording under subsection (c)(3), signs:

69 “(i) The record; and

70 “(ii) A declaration, in substantially the following form, that is part
71 of or securely attached to the record:

72 “I declare under penalty of perjury that the record of which this declaration is a part or to which
73 it is attached is the same record on which (name of notary public), a notary public, performed a
74 notarial act and before whom I appeared by means of communication technology on (date).

75 “_____

76 “Signature of remotely located individual

77 “_____

78 “Printed name of remotely located individual”; and

79 “(B) Sends the record and declaration to the notary public, by first-class
80 United States Mail or delivery by common-carrier or commercial delivery service, not later than
81 3 days after the notarial act was performed; and

82 “(2) The notary public:

83 “(A) In the audio-visual recording under subsection (b)(3), records the
84 individual signing the record and declaration; and

85 “(B) After receipt of the record and declaration from the individual,
86 executes a certificate of notarial act under Section 15, which must include a statement in
87 substantially the following form:

88 “I (name of notary public) witnessed, by means of communication technology, (name of
89 remotely located individual) sign the attached record and declaration on (date).”

90 “(e) A notarial act performed in compliance with subsection (d) of this section complies
91 with Section 15(a)(1) and is effective on the date the remotely located individual signed the
92 declaration under subsection (d)(1)(A)(ii) of this section.

93 “(f) Subsection (d) of this section shall not preclude use of another procedure to satisfy
94 subsection (b)(2) for a notarial act performed with respect to a tangible record.

95 “(g) Except as otherwise provided by another law of the District, a notary public located
96 in the District may use communication technology under subsection (b) of this section to
97 administer an oath to a remotely located individual if the notary public:

98 “(1) Identifies the individual under subsection (b)(1) of this section;

99 “(2) Creates or causes the creation under subsection (b)(3) of this section of an
100 audio-visual recording of the individual taking the oath; and

101 “(3) Retains or causes the retention under subsection (j) of this section of the
102 recording.

103 “(h) If a notarial act is performed under this section, the certificate of notarial act under
104 Section 15 and the short-form certificate under Section 16 must indicate that the notarial act was
105 performed using communication technology.

106 “(i) A short-form certificate under Section 16 for a notarial act subject to this section is
107 sufficient if it:

108 “(1) Complies with rules adopted under subsection (l)(1) of this section; or

109 “(2) Is in the form under Section 16 and contains a statement in substantially the
110 following form:

111 ““This notarial act involved the use of communication technology.”

112 “(j) A notary public, a guardian, conservator, or agent of a notary public, or a personal
113 representative of a deceased notary public shall retain the audio-visual recording created under
114 subsection (b)(3) of this section or cause the recording to be retained by a repository designated
115 by or on behalf of the person required to retain the recording. The recording shall be retained for
116 at least 10 years.

117 “(k) Before a notary public performs the notary public’s initial notarial act under this
118 section, the notary public must notify the Mayor that the notary public will be performing
119 notarial acts with respect to remotely located individuals and identify the technologies the notary
120 public intends to use. If the Mayor has established standards under subsection (l) of this section
121 and Section 27 for approval of communication technology or identity proofing, the
122 communication technology and identity proofing must conform to the standards.

123 “(l) The Mayor, pursuant to Title I of the District of Columbia Administrative procedure
124 Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue
125 rules to :

126 “(1) Prescribe the means of performing a notarial act involving a remotely located
127 individual using communication technology;

128 “(2) Establish standards for communication technology and identity proofing;

129 “(3) Establish requirements or procedures to approve providers of communication
130 technology and the process of identity proofing;

131 “(4) Establish standards and a period for the retention of an audio-visual recording
132 under subsection (b)(3) of this section; and

133 “(5) Prescribe methods for a notary public to confirm under subsections (c) and
134 (d) of this section the identity of a tangible record.

135 “(m) Before adopting, amending, or repealing a rule governing performance of a notarial
136 act with respect to a remotely located individual, the Mayor shall consider:

137 “(1) The most recent standards regarding the performance of a notarial act with
138 respect to a remotely located individual promulgated by national standard-setting organizations
139 and the recommendations of the National Association of Secretaries of State;

140 “(2) Standards, practices, and customs of other jurisdictions that have laws
141 substantially similar to this section; and

142 “(3) The views of governmental officials and entities and other interested persons.

143 “(n) By allowing its communication technology or identity proofing to facilitate a notarial
144 act for a remotely located individual or by providing storage of the audio-visual recording under
145 subsection (c)(3), the provider of the communication technology, identity proofing, or storage
146 shall be deemed to appoint the Mayor as the provider’s agent for service of process in any civil
147 action in the District related to the notarial act.

148 “(o) The Office of the Recorder of Deeds may accept for recording a tangible copy of an
149 electronic record containing a notarial certificate as satisfying any requirement that a record
150 accepted for recording be an original, if the notarial officer executing the notarial certificate
151 certifies that the tangible copy is an accurate copy of the electronic record.”

152 “(p) For the purposes of this section, the term:

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

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

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

159

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

163

164 “(6) “Remotely located individual” means an individual who is not in the physical
165 presence of the notary public who performs a notarial act under subsection (b).”.

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168 Sec. 3. Conforming amendments.

169 An Act To establish a code of law for the District of Columbia, approved March 3, 1901,
170 31 Stat. 1267, chapter 854, is amended as follows:

171 (a) Section 499 (D.C. Code § 42-401) is amended to read as follows:

172 “Sec. 499. Effective date of deeds; exception.

173 “Any deed conveying real property in the District, or interest therein, or declaring or
174 limiting any use or trust thereof, executed and acknowledged and certified as provided in
175 sections 497 (D.C. Code § 42-602), 498 (D.C. Code § 42-101), and 512 (D.C. Code § 42-306),
176 and the Revised Uniform Law on Notarial Acts Act of 2018 (D.C. Law 22-189; effective Dec.
177 21, 2018) (D.C. Code § 1-1231.01 *et seq.*), and delivered to the person in whose favor the same
178 is executed, shall be held to take effect from the date of the delivery thereof, except that as to
179 creditors and subsequent bona fide purchasers and mortgagees without notice of said deed, and
180 others interested in said property, it shall only take effect from the time of its delivery to the
181 Recorder of Deeds for record.”

182 (b) Section 499b (D.C. Code § 42-403) is amended to read as follows:

183 “Sec. 499b. Defective grants recorded on or after the effective date of the Revised
184 Uniform Law on Notarial Acts Amendment Act of 2021.

185 “Any instrument recorded in the Office of the Recorder of Deeds on or after the effective
186 date of the Revised Uniform Law on Notarial Acts Amendment Act of 2021 (D.C. Law ____;
187 effective ____) shall be effective notwithstanding the existence of any failures in the formal
188 requisites listed in section 499c.”

189 (c) Section 499c(a)(1) (D.C. Code § 42-404) is amended to read as follows:

190 “(1) An omission of an acknowledgment, defective or improper acknowledgment,
191 or any failure to meet a requirement in the taking of an acknowledgment.”.

192 Sec. 4. Fiscal impact statement.

193 The Council adopts the attached fiscal impact statement as the fiscal impact statement
194 required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December
195 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

196 Sec. 5. Effective date.

197 This act shall take effect following approval by the Mayor (or in the event of veto by the
198 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as
199 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December
200 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of
201 Columbia Register.