
Notarizing Documents During Shelter in Place Orders

Khanh Tran 📅 April 09, 2020



Given the state and local shelter in place orders in effect due to COVID-19, as well as recommended social distancing practices, it's understandably difficult to get your client's documents notarized right now. Indeed, California is among the slight majority of states that doesn't authorize remote online notarization, requiring signatories to acknowledge their signatures in the physical presence of the notary. So what are your options?

Fortunately, notary services are still permitted, subject to Secretary of State guidance and local regulation. In addition, emergency legislation has been introduced to authorize remote online

notarization in California, at least temporarily.

Current guidance. Despite stopping short of officially deeming notaries public an essential service, the California Secretary of State's office provides that notaries may perform services during a shelter in place order and that it "will not take any action against a notary for having entries in their notary journal during this state of emergency." However, the office also advises notaries to frequently consult and to comply with state and local health directives in performing their services.

Under the current guidance, those seeking notarization can do so using:

1. **Mobile notaries.** The Secretary of State's office expressly recommends the use of mobile notaries, *i.e.*, individual notaries who travel to the client's chosen location to perform services, as long as the parties maintain proper social distancing. For generally recommended precautions during the notarization, see the [Secretary of State's website](#). For safety tips addressing thumbprints and journal entries in particular, see [here](#).
2. **Out-of-state remote online notaries.** California recognizes a notary acknowledgment performed out-of-state, so long as it complies with the legal requirements of the place where the acknowledgment is made. (See Civ. Code, §§ 1182, 1189(b).) Accordingly, California citizens may use a remote online notary public located and properly registered in another state to notarize documents. Currently, 23 states have already enacted remote online notarization statutes. However, many more are issuing emergency measures authorizing the practice. For a recent list tracking actions by different states relating to remote notarization, see [here](#).

In addition, shipping and packaging services, many of which also offer notary services at their retail locations, are considered [essential businesses and may remain open](#).

Proposed legislation. Although the California legislature rejected a remote notarization bill [just last year](#), lawmakers are making another push to permit the practice in light of COVID-19.

[SB 1322](#) was amended on Friday to authorize a California notary to register temporarily as a remote online notary public and to permit the notarization of documents without the actual physical presence of the signer. Originally addressing housing development, the bill was re-titled the "Remote Online Notarization Act" and proposed as an urgency measure, which would take effect immediately upon enactment. If passed, the authorization would last only while the COVID-19 state of emergency is in effect in California.

As currently written, SB 1322 directs the Secretary of State to adopt necessary rules to implement the act. Although what those rules ultimately will be remains unclear, they'll likely resemble remote online notarization statutes that have been adopted in 23 other states. Typically, these statutes address (see, *e.g.*, [Minnesota's "Revised Uniform Law on Notarial Acts"](#); [Montana's "Revised Uniform Law on Notarial Acts"](#)): (1) registration as an online notary public; (2) personal appearance of the signer and the notary via a real-time audio-visual communication technology; (3) requirements for such a communication technology; (4) minimum identity-proof standards; (5) electronic signature and seal requirements; (6)

digital recording and/or electronic journal requirements; and (7) electronic document requirement (only a few states permit remote notarization of tangible documents).

[AB 2424 \("California Online Notary Act of 2020"\)](#) is another active bill that would authorize remote online notarization, but on a permanent basis. In addition, [federal legislation](#) has been introduced that would authorize remote online notarization by any notary in any state, under specified conditions.

As with any service impacted by COVID-19, regulations governing notaries public may change as rapidly as conditions worsen or (fingers-crossed) improve. Helpful resources, for both updates and recommended social distancing practices during notary services, include the California [Secretary of State's website](#) and the [National Notary Association's Bulletin](#).

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