

**RULES
OF
THE TENNESSEE DEPARTMENT OF STATE
DIVISION OF BUSINESS SERVICES**

**CHAPTER 1360-07-03
ONLINE NOTARIES PUBLIC**

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1360-07-03-.01 ONLINE NOTARIZATION.

- (1) A notary public who has been properly commissioned to conduct online notarizations may complete authorized notarial acts by means of an electronic interactive two-way audio and video communication that meets the following requirements. An online notarization may not be performed by an individual who has not been commissioned as an online notary public by the Department of State.
- (2) The terms used herein shall have the same definitions prescribed in T.C.A. § 8-16-302. These rules pertain to online notarizations as defined and used throughout T.C.A. §§ 8-16-301, et seq. Notarial acts satisfying the requirements of T.C.A. §§ 8-16-101, et seq., are not affected by these rules.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). **Administrative History:** Emergency rules filed April 15, 2019; effective through October 12, 2019. Emergency rules expired effective October 13, 2019, and the chapter reverted to its previous status. Original rules filed October 9, 2019; effective January 7, 2020.

1360-07-03-.02 APPLICATION FOR ONLINE NOTARY PUBLIC COMMISSION; RENEWAL.

- (1) A person who has been previously commissioned as a notary public by a county legislative body, and meets the qualification requirements for commissioning as a notary public as outlined in Tennessee Code Annotated Title 8, Chapter 16, may submit an application for commissioning as an online notary public by submitting to the Department of State, Division of Business Services the prescribed application form including the following information:
 - (a) The applicant's legal name as listed in the records of the county where the applicant is commissioned as a notary public;
 - (b) The applicant's physical address in this state, as is on record with the clerk of the county in which the notary is commissioned, which includes the street address, city, state, and zip code. The applicant may provide a post office box number for purposes of receiving mail from the Secretary of State, but must also provide a physical address;
 - (c) A valid email address for the applicant;
 - (d) A valid telephone number for the applicant;
 - (e) The county in this state where the applicant was commissioned as a notary public;

(Rule 1360-07-03-.02, continued)

- (f) The date the applicant was commissioned as a notary public;
 - (g) The date the applicant's commission is set to expire;
 - (h) The name of the vendor and electronic technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document;
 - (i) The name of the vendor and electronic technology or technologies to be used in conducting identity proofing and credential analysis;
 - (j) A copy of the applicant's electronic notarial certificate (otherwise known as a digital certificate) or other technology for rendering a notarized electronic document tamper-evident;
 - (k) A copy of the applicant's electronic seal, in a file format acceptable to the department;
 - (l) A copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated;
 - (m) A copy of any necessary instructions or techniques supplied by a vendor that allow the online notary public to conduct identity proofing and credential analysis;
 - (n) An explanation of the methods and/or technology by which the online notary public will maintain and store the secure electronic records of all electronic documents notarized by the online notary public in accordance with Rule 1360-07-03-.03(8);
 - (o) A certification confirming that the applicant will comply with the following standards prescribed by the Secretary of State; and
 - (p) An application fee of \$75.00.
- (2) The Secretary of State shall issue an online notary public commission to a qualified applicant who meets the eligibility requirements stated in these rules, has submitted a properly completed and executed application, and has submitted the required application fee.
- (3) An online notary public may renew his or her online notary public commission by filing an application for renewal in the same manner and on the same form as if filing an initial application for commission. The renewal must be received by the Secretary of State no later than the expiration date of the online notary public's current commission. The Secretary of State shall determine eligibility for renewals according to the same standards as initial applications, and shall not be bound by prior determinations of eligibility.
- Online notary public commissions will terminate on the same date on which the county notary public commission terminates regardless of when the online notary public commission was granted.
- (4) Applications must be submitted online to the Department of State Division of Business Services via the online portal established by the Department at sos.tn.gov.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). **Administrative History:** Emergency rules filed April 15, 2019; effective through October 12, 2019. Emergency rules

(Rule 1360-07-03-.02, continued)

expired effective October 13, 2019, and the chapter reverted to its previous status. Original rules filed October 9, 2019; effective January 7, 2020.

1360-07-03-.03 PERFORMANCE OF NOTARIAL ACTS.

- (1) An online notary public may perform authorized online notarial acts relating to electronic documents only if the principal personally appears before the online notary public at the time of the notarization; however, such personal appearance may be by means of an electronic two-way audio and video communication.
- (2) An online notary public may perform authorized notarial acts by means of an electronic interactive two-way audio and video communication only when the online notary public is physically located within this state, without regard to whether the principal is physically located in this state at the time of the online notarization.
- (3) An online notary public shall require the principal to demonstrate, to the satisfaction of the online notary public, that such person is not under duress and is not otherwise being coerced to complete the transaction, in order to preserve the integrity, security, and authenticity of online notarizations. An online notary public is authorized to refuse to perform a notarial act when the online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence.
- (4) An online notary public must verify the identity of a principal at the time that the signature is taken by means of two-way video and audio conference technology. Identity may be verified by the online notary public's personal knowledge of the principal, or by:
 - (a) Remote presentation by the principal of a non-military, government-issued credential, which is an identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been stamped by the United States immigration and naturalization service, and which is unexpired, contains the signature and a photograph of the principal, and which is capable of credential analysis in accordance with Rule 1360-07-03-.05.
 - (b) Credential analysis of the credential provided by the principal as set forth in Rule 1360-07-03-.05; and
 - (c) Identity proofing of the principal as set forth in Rule 1360-07-03-.05.
- (5) Under no circumstances shall an online notary public base identification merely on familiarity with a principal's electronic signature or an electronic verification process that authenticates the principal's electronic signature when the principal does not personally appear before the online notary public.
- (6) The online notary public shall refuse to complete the performance of a notarial act where:
 - (a) The online notary public has reasonable grounds to believe that the principal is acting under coercion or undue influence;
 - (b) The online notary public is unable to verify the identity of the principal using the means and the standards identified in these rules;
 - (c) The online notary public becomes aware that the security of the two-way audio-visual transmission is not secure;

(Rule 1360-07-03-.03, continued)

- (d) The signature of the principal cannot be attached to the electronic document; or
 - (e) The online notary public's electronic notarial certificate and seal cannot be attached to the electronic document using an electronic technology which renders any subsequent change or modification to the document evident.
- (7) The online notary public shall complete and attach an electronic notarial certificate to all written notarial acts that identifies the principal, the date of notarization, the state and county in which the notarization was performed, that the notarial act was an online notarization, and the type of notarial act performed. The electronic notarial certificate shall be signed by affixing or logically associating the online notary public's electronic notarial certificate, electronic signature, and electronic seal in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.
- (8) An online notary public performing authorized notarial acts must also satisfy the following requirements.

An online notary public, or his or her properly designated custodian or repository, must keep, for at least 5 years after the date of the transaction or proceeding, a secure electronic record of all electronic documents notarized by the online notary public, containing all of the following information:

- (a) The date and time of the notarization;
 - (b) The type of notarial act;
 - (c) The type, the title, or a description of the electronic document or proceeding;
 - (d) The printed name and address of each principal involved in the transaction or proceeding;
 - (e) Evidence of the identity of each principal involved in the transaction or proceeding in the form of:
 - 1. A statement that the principal(s) is personally known to the online notary public; or both
 - 2. A notation of the type of identification document provided to the online notary public for each principal; and
 - 3. A notation that the principal(s) completed identity proofing and credential analysis procedures described by Rule 1360-07-03-.05 and both were satisfactory to verify the identity of the principal(s);
 - (f) A recording of any video and audio conference that is the basis for satisfactory evidence of identity and a notation of the type of identification presented as evidence; and
 - (g) The fee, if any, charged for the notarization.
- (9) The online notary public must take reasonable steps to ensure that the two-way video and audio communication used is encrypted during transmission, through means such as a virtual private network (VPN), and secure from unauthorized interception.

(Rule 1360-07-03-.03, continued)

- (10) The online notary public shall not disclose any access information used to affix the online notary public's electronic notarial certificate, signature, and seal, except when requested by the Secretary of State, law enforcement, the courts, or pursuant to an agreement between the online notary public and an electronic documentation preparation and transmission vendor, which agreement shall have in place reasonable precautions to prevent the unauthorized release of access information.
- (11) The online notary public should ensure that all records relating to any individual transaction are securely stored using the Advanced Encryption Standard (AES) as a minimum encryption standard and that the principal's personally identifying information or any government-issued identification numbers cannot be accessed by unauthorized individuals. The online notary public should refrain from recording, or take steps to obscure from the recording, any identification number that was assigned to the principal by a governmental agency or by the United States and any other number(s) that could be used to identify the principal.
- (12) Records of an online notarization shall be retained, in a safe and secure manner, for five years following the date of the notarization. An online notary public must also maintain a backup of the electronic records for the same period of time. Both the original records and the backup shall be protected from unauthorized use. An online notary public may elect to store such recordings with a custodian or repository and such recordings may be stored separately from the journal as long as the corresponding journal entry cross-references the place of storage and describes the manner in which the record is stored.
- (13) An online notary public may use his or her electronic signature only for performing online notarizations. The online notary public may certify that a tangible copy of an electronic record is an accurate copy of the electronic record by also affixing his or her signature and seal to the copy of the electronic record in the traditional manner or other manner authorized by law, but only where the online notary public is capable of independently verifying the document is a true and correct copy of the electronic record consistent with the requirements of T.C.A. § 66-24-101(d).

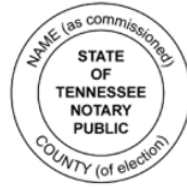
Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). **Administrative History:** Emergency rules filed April 15, 2019; effective through October 12, 2019. Emergency rules expired effective October 13, 2019, and the chapter reverted to its previous status. Original rules filed October 9, 2019; effective January 7, 2020.

1360-07-03-.04 ELECTRONIC SIGNATURE AND SEAL.

- (1) An online notary public must use the same electronic signature for all online notarial acts performed by the online notary public.
- (2) An online notary public must use the same electronic seal for all online notarial acts performed by the online notary public, and a copy of such seal must be provided to the Department of State at the time of the online notary public's application for certification as an online notary public. The name on the online notary public seal must match the name, as stated on the application, under which the online notary public is commissioned and performs all notarial acts.
- (3) An online notary public shall use an electronic seal that substantially conforms to the following design: a circular, square, or rectangular seal with the notary public's name as it appears on the commission printed at the top, the county of election printed at the bottom, the words "State of Tennessee Notary Public" or "Tennessee Notary Public" printed in the center, and the words "Online Notary Public" printed below. The electronic seal must also be

(Rule 1360-07-03-.04, continued)

accompanied by a statement of the date upon which the online notary public's commission expires. A sample seal format appears below:



Online Notary Public
My Commission Expires:
[Date]

- (4) An online notary public must attach or logically associate his or her electronic signature and seal to the electronic notarial certificate in a manner that is capable of independent verification and renders any subsequent change or modification to the electronic document evident.
- (5) The online notary public must use technology from a third-party provider who has provided the online notary public with evidence of its ability to provide an electronic technology standard that utilizes Public Key Infrastructure (PKI) technology from a PKI service provider that is X.509 compliant.
- (6) The electronic notarial certificate for an online notarization must contain a notation that the notarization is an online notarization, which may be satisfied by affixing the online notary public's seal to the electronic notarial certificate. The acknowledgment contained within the electronic notarial certificate must also contain a statement that the principal "personally appeared before me by audio-video communication" or "personally appeared by audio-video communication" or "before me appeared by audio-video communication".
- (7) The online notary public's electronic notarial certificate, electronic signature, and electronic seal must remain within the exclusive control of the online notary public (including control by means of use of a password) at all times and shall be used only for the purpose of performing online notarial acts.
- (8) The online notary public must provide any necessary instruction or techniques supplied by a vendor that allow the online notary public's electronic notarial certificate and seal to be read and authenticated.

If at any time the online notary public adopts a new or additional technology or vendor with which to perform online notarial acts, the online notary public must notify the Department of State of the new or additional technology, signature and/or seal, as well as any additional information that may be requested by the Department of State.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). **Administrative History:** Emergency rules filed April 15, 2019; effective through October 12, 2019. Emergency rules expired effective October 13, 2019, and the chapter reverted to its previous status. Original rules filed October 9, 2019; effective January 7, 2020.

1360-07-03-.05 STANDARDS FOR ONLINE NOTARIZATION.

- (1) Identity proofing and credential analysis must be performed by a third party who has provided evidence to the online notary public of the ability to satisfy the requirements of this chapter.

(Rule 1360-07-03-.05, continued)

(2) Requirements for Credential Analysis.

A credential is a non-military identification card or other document issued by the United States government, any state government, or a passport issued by a foreign government that has been stamped by the United States immigration and naturalization service. In order to be valid, the credential must also be unexpired and contain the photograph and signature of the principal. Credential analysis is the process by which the validity of a non-military government-issued identification credential is verified. Credential analysis is performed utilizing public and proprietary data sources to verify the credential presented by the principal. Credential analysis shall, at a minimum:

- (a) Use automated processes to aid the online notary public in verifying the identity of a principal;
- (b) Ensure that the credential passes an authenticity test, consistent with sound commercial practices that:
 - 1. Use appropriate technologies to confirm the integrity of visual, physical or cryptographic security features;
 - 2. Use appropriate technologies to confirm that the credential is not fraudulent or inappropriately modified;
 - 3. Use reasonable efforts to utilize information held or published by the issuing source or authoritative source(s), as made generally available for commercial purposes, to confirm the validity of personal details and credential details; and,
 - 4. Provide output of the authenticity test to the online notary public; and
- (c) Enable the online notary public to visually compare the following for consistency: the information and photo presented on the credential itself and the principal as viewed by the online notary public in real time through audio-visual transmission.

(3) Requirements for Identity Proofing.

Identity proofing is the process by which the identity of an individual is affirmed by a third party through review of public and proprietary data sources. Identity proofing is performed through dynamic Knowledge Based Authentication (KBA) which meets the following requirements:

- (a) The principal must answer a quiz consisting of a minimum of five (5) questions related to the principal's personal history or identity, formulated from public and proprietary data sources;
- (b) Each question must have a minimum of five (5) possible answer choices;
- (c) At least 80% of questions must be answered correctly;
- (d) All questions must be answered within two (2) minutes;
- (e) If the principal fails in his or her first attempt, the principal may retake the quiz one time within 24 hours;
- (f) During the second attempt, a minimum of 60% of the prior questions must be replaced; and

(Rule 1360-07-03-.05, continued)

- (g) If the principal fails in his or her second attempt, the principal is not permitted to retry with the same online notary public for a period of 24 hours.
- (4) If the principal must exit the workflow, the principal must meet the criteria outlined in this section and must restart the identity proofing and credential analysis from the beginning.
- (5) An online notarization system used to perform online notarial acts by means of two-way audio-video communication shall:
 - (a) Provide for continuous, synchronous audio-visual feeds;
 - (b) Provide sufficient video resolution and audio clarity to enable the online notary public and the principal to see and speak with each other simultaneously through live, real-time transmission;
 - (c) Provide sufficient captured image resolution for credential analysis to be performed in accordance with these rules;
 - (d) Include a means of authentication that reasonably ensures only authorized parties have access to the audio-video communication;
 - (e) Provide some manner of ensuring that the electronic record presented for online notarization is the same record electronically signed by the principal;
 - (f) Be capable of securely creating and storing or transmitting securely to be stored an electronic recording of the audio-video communication, keeping confidential the questions asked as part of any identity proofing quiz and the means and methods used to generate the credential analysis output; and
 - (g) Provide reasonable security measures to prevent unauthorized access to:
 - 1. The live transmission of the audio-video communication;
 - 2. A recording of the audio-video communication;
 - 3. The verification methods and credentials used to verify the identity of the principal; and
 - 4. The electronic documents presented for online notarization.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). **Administrative History:** Emergency rules filed April 15, 2019; effective through October 12, 2019. Emergency rules expired effective October 13, 2019, and the chapter reverted to its previous status. Original rules filed October 9, 2019; effective January 7, 2020.

1360-07-03-.06 FEES.

An online notary public, or the online notary public's employer, may charge a fee that does not exceed twenty-five dollars (\$25.00) for performing each online notarization.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). **Administrative History:** Emergency rules filed April 15, 2019; effective through October 12, 2019. Emergency rules expired effective October 13, 2019, and the chapter reverted to its previous status. Original rules filed October 9, 2019; effective January 7, 2020.

1360-07-03-.07 CHANGES AFTER COMMISSIONING.

- (1) An online notary public who changes his or her address, such that the online notary public no longer qualifies for either a traditional notary public commission or an online notary public commission, vacates the office of online notary public and must surrender the online notary public commission to the Secretary of State.
- (2) An online notary public who replaces or changes an electronic notarial certificate or electronic seal during the term of the online notary public commission must provide an updated copy of the electronic notarial certificate or electronic seal to the Secretary of State prior to conducting any notarial acts using the updated electronic notarial certificate or electronic seal. This information may be updated using the Secretary of State's web-based Online Notary Application.
- (3) If at any time during the term of the online notary commission the online notary public elects to use a new vendor or technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document, the online notary public must provide to the Secretary of State the name of the vendor and electronic technology or technologies to be used in attaching or logically associating an electronic notarial certificate, signature, and seal to an electronic document and a copy of any necessary instructions or techniques supplied by the vendor that allow the online notary public's electronic signature and seal to be read and authenticated prior to conducting any notarial acts using the new vendor or technology or technologies. This information may be updated using the Secretary of State's web-based Online Notary Application.
- (4) If at any time during the term of the online notary public commission the online notary public elects to use a new vendor or technology or technologies to be used in conducting identity proofing and credential analysis, the online notary public must provide to the Secretary of State the name of the vendor and electronic technology or technologies to be used in conducting identity proofing and credential analysis and a copy of any necessary instructions or techniques supplied by the vendor that allow the online notary public to conduct identity proofing and credential analysis prior to conducting any notarial acts using the new vendor or technology or technologies. This information may be updated using the Secretary of State's web-based Online Notary Application.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). **Administrative History:** Emergency rules filed April 15, 2019; effective through October 12, 2019. Emergency rules expired effective October 13, 2019, and the chapter reverted to its previous status. Original rules filed October 9, 2019; effective January 7, 2020.

1360-07-03-.08 TERMINATION OF COMMISSION.

If the Secretary of State determines that any online notary public has not complied with these regulations or the provisions of Tennessee Code Annotated Title 8, Chapter 16 related to online notarization, the Secretary of State shall terminate the commission of the online notary public.

Authority: T.C.A. §§ 8-16-301, et seq. (Public Chapter 931, effective April 18, 2018). **Administrative History:** Emergency rules filed April 15, 2019; effective through October 12, 2019. Emergency rules expired effective October 13, 2019, and the chapter reverted to its previous status. Original rules filed October 9, 2019; effective January 7, 2020.