



## **Frequently Asked Questions**

### **New Hampshire Executive Order 2020-04, Emergency Order #11 Enabling Remote Notarization Processes**

In the wake of the COVID-19 pandemic, many state leaders and title professionals are looking for a solution to enable real estate transactions to continue to close. Such solutions include emergency rules and executive orders to permit the use of remote notarization in the state. Under Executive Order 2020-04 and Emergency Order #11, issued by New Hampshire Governor Christopher Sununu on March 23, 2020, notaries are able to offer remote notarization services.

These FAQs are designed to provide some basic explanation of what is allowed under NH Emergency Order #11 and what you must do to meet the requirements set forth in this emergency order.

#### **1. How do I conduct a remote notarization under Emergency Order #11?**

Under [Emergency Order #11](#), New Hampshire's Governor, Christopher Sununu, authorized the use of communication technology to conduct a notarization, under the following conditions:

1. The individual is located in New Hampshire;
2. The individual and the notary can communicate simultaneously by sight and sound through an electronic device or process during the notarization;
3. The notary has identified the individual through:
  - a. Personal knowledge of the individual;
  - b. At least two different processes or services that provide the notary with the means to verify the individual's identity through a review of public or private data sources; or
  - c. An oath or affirmation of a credible witness; and
4. The notary records and retains a copy of the performance of the notarization for the term of the notary's commission, including any renewals.

A notary may remotely notarize a document for an individual located outside of New Hampshire using the same process, so long as:

1. The record is intended for filing or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of New Hampshire; or
2. The record involves property located in New Hampshire or a transaction substantially connected to New Hampshire; and
3. The notary has no knowledge that the execution of the record is prohibited by the laws of the jurisdiction where the individual is physically located.

Upon signing a document remotely, the individual must mail the signed copy to the notary for certification and execution with the notary's signature and official stamp or seal. The Order provides that the date of the notarization shall be the date the individual signed the document.

**2. What technology do I need to conduct a remote notarization under Emergency Order #11?**

To conduct a remote notarization under this emergency order, you will need:

1. A webcam equipped with a microphone that will allow you and your client to simultaneously see and hear each other.
2. An internet connection that can support a video conference call. You should also use a secure connection, i.e., a private network that requires a password to access the network.
3. Access to or an account with a video conference provider. Since Emergency Order #11 requires you to retain a copy of the remote notarization session, you must engage a video conference provider that provides this service. For more information about vendors, please refer to Question 3 below.
4. A vendor who can perform multifactor authentication of an individual's identity, in accordance with Emergency Order #11. Please refer to Question 5 below for more information about what is required for this process.

Some optional technology that may be helpful when remotely witnessing the execution of a document is an electronic document creator. These providers allow you to upload a document and "tag" where your client must sign and/or initial the document to complete it. Please note that these programs will enable your client to use electronic signatures to sign these documents, which can then be electronically transmitted to you for notarization.

**3. Does CATIC require the use of any particular vendors or have a list of approved vendors that we must use to conduct a notarization under Emergency Order #11?**

To comply with the provisions of Emergency Order #11, you may use whatever vendor you feel can meet your business needs. CATIC does not require the use of a specific vendor nor do we have a list of approved vendors. If you are looking for vendor options, you may refer to CATIC's [Technology Vendor List](#). This list provides a helpful starting point as you begin to consider which vendors can meet your needs. When selecting a vendor, it is helpful to consider whether they can meet your company's security expectations and obligations, as set forth in N.H. Rev. Stat. Ann. § 420-P.

**4. What if my client does not have the ability to print or scan documents? How can they execute documents remotely?**

If your client does not have a printer to create a hardcopy of the document for a wet signature, you may mail a copy to them for execution.

**5. How should I verify the identity of my client, as required by Emergency Order #11?**

If you do not have personal knowledge of your client, you must verify your client's identity through one of the following options:

- a. At least two different processes or services that provide the notary with the means to verify the signer's identity through a review of public or private data sources; or
- b. An oath or affirmation of a credible witness.

If you are identifying the signer through option (a) above, you must use the service of an identification verification company who is able to verify the signer's identity using two different processes that review public or private data sources. These two different processes may include:

1. A review of a valid government-issued credential; and
2. A series of knowledge-based questions that only the signer should know. These questions will be similar to those asked when you attempt to access your online bank account, such as, "Which address is associated with you?"

Since the verification process requires review of public or private data sources, this is not a process you can complete without the use of an identification verification vendor. For a list of options that can serve this need, please refer to CATIC's [Technology Vendor List](#).

You may also verify your client's identity through oath or affirmation of a credible witness who is either:

1. In the physical presence of either the signer or notary; or
2. Able to communicate simultaneously by sight and sound through an electronic device or process at the time of the notarization so long as the witness has personal knowledge of the signer and whose identity can be verified by the notary either through personal knowledge or option (a) detailed above.

**6. How do I verify the location of my client during the notarization?**

Under Emergency Order #11, a notary may take the acknowledgment of both an individual located in New Hampshire, or an individual located outside the state if the record being signed by the out-of-state individual is:

1. Intended for filing or relates to a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of New Hampshire; or
2. Involves property located in New Hampshire or a transaction substantially connected to New Hampshire.

The notary must also have no knowledge that the execution of the record is prohibited by the laws of the jurisdiction where the individual is physically located.

**7. If I am a notary commissioned in New Hampshire, can I notarize a document for a client while I am out of state?**

Emergency Order #11 does not make mention of where the notary must be at the time of notarization. However, from a practical standpoint, the notarial act will take place where the notary is physically located at the time of notarization, and that notarial act will be interpreted by the laws of the state where the notary is. If the notary is in Maine and the signer is in New Hampshire, the notarial act would be occurring in Maine and Maine law would apply. Maine law does not permit remote notarization of a signer who is not in Maine and thus, this act could be invalid.

**8. Do my professional liability and errors and omissions policies cover me if I take an acknowledgement outside the physical presence of my client?**

It depends. Your professional liability policy or errors and omissions policies could contain specific exclusions for claims based upon acknowledgments taken outside the physical presence of the signatory. Be sure to check your policies to determine if they contain any exclusion of coverage in this area and, if so, take proper measures to protect yourself or find an alternative safe way to close your transactions. If you are unsure whether your policies provide such coverage, you should contact your broker and inquire.

**9. Will lenders allow documents to be executed in accordance with Emergency Order #11?**

Lenders may have special requirements for executing documents remotely. CATIC recommends that you reach out to your lender partners to describe the process you are using to enable your clients to sign documents remotely to verify that such practices will not violate their closing instructions.

**10. Does the issuance of Emergency Order #11 require me to conduct a notarization using remote processes as described under the Order?**

No, you may conduct a traditional in-person notarization under N.H. Rev. Stat. § 455:1, *et seq.* However, you should be mindful of safety measures and social distancing requirements as established by New Hampshire Executive Order 2020-04 and subsequent Emergency Orders.

**11. Does Emergency Order #11 allow me to conduct a full remote notarization, as allowed in other states across the country?**

**12.** No, Emergency Order #11 enables some remote notarization processes but does not permit a full remote notarization to be conducted under New Hampshire law. Though

the signer may execute a document in a separate physical location from the notary, and the notary may witness such process through communication technology, the Order requires that the signer mail a hard copy of the documents to the notary for notarization. This requirement differs from typical remote notarization laws that allow the notary to also electronically notarize the document in a remote setting through audio-video technology.

**13. I hear that a federal remote notarization act is being considered by Congress. If such an act passes, how will Emergency Order #11 be affected?**

The federal legislation that is currently being considered by Congress is the [SECURE Notarization Act](#). This federal proposal would allow notaries in every state to remotely notarize documents in accordance with minimum standards set forth in the bill. Those minimum standards require the use of tamper-evident technology and multifactor authentication to verify the identity of the signer.

The SECURE Notarization Act preempts state law to the extent that the state law establishes standards that fall below the minimum standards set forth in the federal act. Given that Emergency Order #11 requires multifactor authentication of the signer's identity and complies with the technology requirements set forth in the proposed federal legislation, the Emergency Order may remain intact following the passage of this federal proposal. However, the federal proposal also permits full remote notarization capabilities. In the event you want to conduct a full remote notarization, you would need to engage a third-party remote notarization service provider to assist you in remotely notarizing your client's documents. For a list of companies that offer remote notarization services, please refer to CATIC's [Technology Vendor List](#). Please contact your state's U.S. Senators, and reference S. 3533, or your Congressional Representatives, and reference H.R. 6364, if you would like to provide your opinion on such legislation.

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Margaret "Maggie" Hassan (D)	Manchester, NH: 603-622-2204 Washington, DC: 202-224-3324

New Hampshire U.S. Representatives		
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