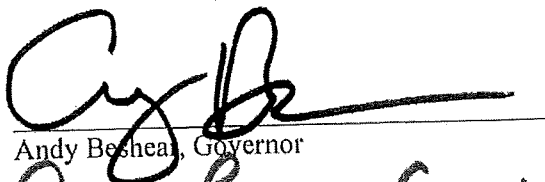


1 STATEMENT OF EMERGENCY

2 This emergency administrative regulation is being promulgated in order to meet the
3 January 1, 2020 effective date of the electronic and remote (online) notary law, Senate Bill 114,
4 which was passed in Kentucky's 2019 legislative session. Currently there are no administrative
5 regulations in place for electronic and remote (online) registration of notaries public. This is being
6 filed as an emergency administrative regulation pursuant KRS 13A(1)(a)3, in order to ensure that
7 Kentuckians may utilize the statutory rights conferred by KRS 423 by the January 1, 2020,
8 effective date.

9 This emergency administrative regulation is being filed simultaneously with and will be
10 replaced by an ordinary administrative regulation to ensure this regulation is ongoing after the
11 expiration of the emergency regulation. The ordinary administrative regulation is identical to this
12 emergency administrative regulation. This emergency administrative regulation differs from any
13 filed within the last nine (9) months.

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17 Andy Beshear, Governor

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21 Alison Lundergan Grimes

22 Secretary of State
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SECRETARY OF STATE

Emergency Administrative Regulation

30 KAR 8:010. Definitions for 30 KAR Chapter 8.

RELATES TO: KRS Chapter 423

STATUTORY AUTHORITY: KRS 423.355, KRS 423.390, KRS 423.415 and KRS

423.455. NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415, KRS 423.390, KRS

423.415 and KRS 423.455 authorize the Secretary of State to promulgate administrative

regulations to implement KRS 423.415 to 423.455. This emergency administrative regulation

establishes definitions for 30 KAR Chapter 8.

Section 1. Definitions. Words and terms defined in KRS 423.300 shall have the same meaning in this chapter. For the purposes of this chapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise.

(a) "Digital Certificate" means an electronic record, issued by a third party certificate authority, which certifies the ownership of a public key, rendering an electronic document as tamper-evident.

(b) "Member of the notary public's immediate family" means a spouse, former spouse, a grandparent, a grandchild, a parent, a child, a stepchild or any other person living in the same household.

1 (c) "Online notarial act" means an electronic notarization performed for a remotely located
2 individual facilitated by communication technology.

3 (d) "Notary technology" means an electronic device or process that allows a notary public to
4 perform notarial acts with regard to electronic documents with or without the use of
5 communication technology.
6

7 **30 KAR 8:020. Notary Public Application, Approval or Denial of Application, Voluntary**
8 **Termination and Required Notice of Change of Information.**

9 RELATES TO: KRS Chapter 423

10 STATUTORY AUTHORITY: KRS 423.415

11 NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415 authorizes the
12 Secretary of State to promulgate administrative regulations establishing the process of granting,
13 renewing, conditioning or denying a notary commission. This emergency regulation prescribes
14 the process of granting, renewing, conditioning or denying a notary commission.

15 Section 1. Application. An application for a commission as a notary public shall be
16 submitted on a form provided for that purpose by the Office of the Secretary of State or
17 submitted on an electronic portal established by the Office of the Secretary of State for that
18 purpose. A person who executes an application for filing with the Secretary of State shall be
19 deemed to have declared under penalty of perjury that to the person's knowledge, the contents of
20 the application are true. Every application for a notarial commission must include:

21 (1) The full legal name of the applicant;

22 (2) The email address of the applicant;

23 (3) A telephone number for the applicant;

- 1 (4) The signature of the applicant;
- 2 (5) The county for which the application is being made;
- 3 (6) The physical and mailing address within the county of application where the applicant
- 4 resides or is employed;
- 5 (7) A statement of whether the applicant has previously held a notary commission, the
- 6 name under which the applicant was previously commissioned and the date at which
- 7 the most recent commission expired;
- 8 (8) A statement that the applicant is at least eighteen years of age;
- 9 (9) A statement that the applicant is a citizen or permanent legal resident of the United
- 10 States;
- 11 (10) A statement that the applicant is able to read and write English;
- 12 (11) A statement identifying the surety provider from which the applicant intends to
- 13 obtain surety;
- 14 (12) A statement that the applicant is not disqualified from becoming a notary public
- 15 under the provision of KRS Chapter 423 or this chapter;
- 16 (13) A statement that the applicant is not disqualified for any reason under Section 2
- 17 (2) (a) - (c); and
- 18 (14) Payment of the required fee.

19 Section 2. Approval or Denial of Application.

- 20 (1) Approval of Application. If the applicant has complied with the provisions of KRS
- 21 Chapter 423 and this chapter, the application shall be approved. A notary
- 22 commission is effective as of the date of entry of that commission in the database of
- 23 notary publics on the website of the Secretary of State.

1 (2) Disapproval of Application. The Secretary of State may disapprove the application
2 for the following reasons:

3 (a) The notary public's failure to comply with KRS Chapter 423 or the provisions of this
4 chapter or the existence of a pending inquiry regarding the notary public's failure to
5 comply with KRS Chapter 423 and this chapter;

6 (b) Any information required under this administrative regulation is missing, inaccurate,
7 incomplete or cannot be independently verified;

8 (c) A fraudulent, dishonest or deceitful misstatement or omission of fact in the submitted
9 application;

10 (d) A finding against, or admission of liability by the applicant in any legal proceeding or
11 disciplinary action based on the applicant's fraud, dishonesty, or deceit;

12 (e) The denial, refusal to renew, revocation, or suspension of an applicant's notary
13 commission or registration in another state; or

14 Failure of the applicant to maintain an assurance.

15 (3) If the application or registration is disapproved, the Secretary of State will
16 state the reasons for the disapproval.

17 Section 3. Voluntary Termination of Notary Commission. A notary public may terminate
18 a notary commission by notifying the Office of the Secretary of State of that intent, in writing at:
19 Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort, KY
20 40602 or on any electronic portal created by the Office of the Secretary of State for that purpose.
21 Submission of a notification of termination of a notary commission automatically terminates any
22 notary registration.

1 Section 4. Change of Information. A notary public must notify the Office of the
2 Secretary of State, in writing at: Secretary of State, Division of Corporations, Notary
3 Commissions, P.O. Box 821, Frankfort, KY 40602, of any change of the following information
4 during the period of the notary's commission, within ten days of the change, on a form
5 promulgated by the Office of the Secretary of State for that purpose or on any electronic portal
6 created by the Office of the Secretary of State for that purpose:

7 (1) A change in the mailing, physical or electronic mail address of the notary public;

8 (2) A change in the county of residence of the notary public;

9 (3) A change in the legal name of the notary public;

10 (4) A change in the notary public's signature;

11 (5) A change in the notary public's electronic signature, if any; and

12 (6) A change in the notary technology used by the notary public.

13 **30 KAR 8:030. Registration; Electronic and Online notarization.**

14 RELATES TO: KRS Chapter 423

15 STATUTORY AUTHORITY: KRS 423.390

16 NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.390 requires the Secretary of
17 State to promulgate administrative regulations to establish forms and procedures applicable to
18 the registration of notaries to perform notarial acts with respect to electronic records and notarial
19 acts involving remotely located individuals using communication technology. This emergency
20 administrative regulation establishes the requirements for registration by notaries public to
21 perform notarial acts with respect to electronic records and notarial acts involving remotely
22 located individuals using communication technology.

23 Section 1. Authority to perform electronic and online notarial acts.

1 (1) Electronic notarial acts. An individual is authorized to perform notarial acts with respect
2 to electronic records by:

3 (a) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS
4 423.010 and KAR 8:020;

5 (b) Registering with the Secretary of State under Section 2 of this administrative regulation to
6 perform electronic notarial acts; and

7 (c) Receiving written authorization to perform electronic notarial acts from the Secretary of
8 State under Section 3 of this administrative regulation.

9 (2) Online notarial acts. An individual is authorized to perform online notarial acts by:

10 (a) Being duly and currently commissioned as a notary public under KRS 423.390 or KRS
11 423.010;

12 (b) Registering with the Secretary of State under Section 2 of this administrative regulation to
13 perform online notarial acts; and

14 (c) Receiving written authorization to perform online notarial acts from the Secretary of State
15 under Section 3 of this administrative regulation.

16 (3) An individual who is authorized to perform online notarial acts under this section is also
17 authorized to perform electronic notarial acts.

18 Section 2. Registration procedures.

19 (1) Registration format. Registration under this section shall be by electronic registration to
20 the Secretary of State pursuant to KRS 423.390 and shall include the following information:

21 (a) The individual's full legal name;

22 (b) The county in which the individual resides or has his or her place of employment or
23 practice in this Commonwealth;

- 1 (c) The registrant's date of birth;
- 2 (d) The registrant's notary identification number and the expiration date of the registrant's
- 3 notary commission;
- 4 (e) The electronic mail address, physical and mailing address where the registrant resides or
- 5 is employed;
- 6 (f) An indication of whether the individual is registering to perform electronic notarial acts or
- 7 online notarial acts, or both;
- 8 (g) A description of the notary technology that the individual intends to use to perform
- 9 electronic notarial acts and/or online notarial acts, including the technologies or devices to
- 10 maintain the journal required under KRS 423.380 and to render electronic records tamper-
- 11 evident after a notarial act is completed;
- 12 (h) A copy of the applicant's electronic signature, the digital certificate required under 30
- 13 KAR 8:040, the official stamp, if any, along with any necessary instructions or techniques
- 14 supplied by a vendor or notary that allows the signature and stamp to be read and authenticated,
- 15 in a file format acceptable to the Secretary of State;
- 16 (i) The name, address, and website URL of any vendors or other persons that will directly
- 17 supply the notary public with technology that the notary public intends to use;
- 18 (j) A statement of whether the notary technology provider has registered with the Secretary
- 19 of State;
- 20 (k) A copy of any necessary instructions or techniques supplied by a vendor that allow the
- 21 notary to conduct identity proofing and credential analysis;
- 22 (l) An explanation of the methods or technology by which the notary will maintain and store
- 23 the journal required by KRS 423.380;

1 (m) A statement that the technologies or devices named in the registration are compliant with
2 KRS Chapter 423 and with this chapter;

3 (o) The county, book and page where the notary's surety bond is recorded;

4 (p) A disclosure of any convictions, professional license or commission revocations,
5 professional disciplinary actions or other disqualifying actions or proceedings taken under the
6 laws of any state against the notary public.

7 (2) Submission of registration form. The registration must be submitted electronically to
8 Secretary of State as provided by information posted on the Secretary of State's website at
9 <https://sos.ky.gov/>.

10 (3) Use of additional vendors. If, during the term of a notary public's commission, the notary
11 public intends to use the technologies of another vendor or person than those identified in
12 Section (1)(i) of this section, then an additional notification identifying such other vendors or
13 other persons must be submitted to the Secretary of State as provided in this section and in
14 accordance with the manner established by the Secretary of State as posted on the Secretary of
15 State's website at <https://sos.ky.gov/>.

16 Section 3. Approval or disapproval by the Secretary of State.

17 (1) Approval of registration. If the provider of the technology identified by the notary public
18 in the registration required under Section 2 of this administrative regulation has registered with
19 the Secretary of State, and the registrant has complied with the provisions of KRS Chapter 423
20 and this chapter, the registration to perform notarial acts with respect to electronic records shall
21 be approved. A registration is effective as of the date of entry of that registration in the database
22 of the Secretary of State.

1 (2) Disapproval of registration. The Secretary of State may disapprove the registration and
2 reject the notary public's registration for the following reasons:

3 (a) The notary public's failure to comply with KRS Chapter 423 or the provisions of this
4 chapter or a pending inquiry regarding the notary public's failure to comply with KRS Chapter
5 423 and this chapter;

6 (b) Any information required under Section 2 of this administrative regulation is missing,
7 inaccurate, or incomplete;

8 (c) A fraudulent, dishonest, or deceitful misstatement or omission in the submitted
9 registration;

10 (d) A finding against, or admission of liability by, the registrant in any legal proceeding or
11 disciplinary action based on the registrant's fraud, dishonesty, or deceit;

12 (e) Denial, refusal to renew, revocation, or suspension of a notary commission or registration
13 in another state;

14 (f) Failure of the notary to maintain an assurance; or

15 (g) The provider of the technology identified by the notary public has not registered with the
16 Secretary of State.

17 (3) If the notary public's registration is disapproved, the Secretary of State will state the
18 reasons for the disapproval.

19 Section 4. Termination of electronic registration. A notary public may terminate an
20 electronic registration by notifying the Office of the Secretary of State of that intent, in writing
21 at: Secretary of State, Division of Corporations, Notary Commissions, P.O. Box 821, Frankfort,
22 KY 40602 or on any electronic portal created by the Office of the Secretary of State for that

1 purpose. Termination of a notary public's electronic registration does not terminate a notary
2 public's commission.

3 Section 5. Renewal of commission. The renewal of the commission of a notary public who
4 has previously registered to perform notarial acts with regard to electronic records or online
5 notarizations under Section 1 of this administrative regulation constitutes renewal of the notary
6 public's registration without the necessity of submitting another registration under this
7 administrative regulation.

8 Section 6. Updated technology. Nothing herein shall be construed to prohibit a notary public
9 from receiving, installing, or using a hardware or software update to the technologies that the
10 notary public identified under Section 2 of this administrative regulation if the hardware or
11 software update does not result in technologies that are materially different from the technologies
12 that the notary public identified.

13 **30 KAR 8:040. Standards for notarization of electronic documents.**

14 RELATES TO: KRS Chapter 423

15 STATUTORY AUTHORITY: KRS 423.415

16 NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415 authorizes the Secretary of
17 State to promulgate administrative regulations regarding the performance of notarial acts with
18 respect to electronic records. This emergency administrative regulation establishes standards for
19 the performance of notarial acts with respect to electronic records.

20 Section 1. Tamper-evident technology requirements. A notary public must select one or more
21 tamper-evident technologies to perform notarizations with regard to electronic records. No
22 person may require a notary public to use a technology that the notary public has not selected.
23 The tamper-evident technology must consist of a digital certificate complying with the X.509

1 standard adopted by the International Telecommunication Union or a similar industry-standard
2 technology. A notary public must attach or logically associate the notary public's electronic
3 signature and official stamp, if any, to an electronic record that is the subject of a notarial act by
4 use of the digital certificate. A notary public may not perform an electronic notarization if the
5 digital certificate:

- 6 (1) Has expired;
- 7 (2) Has been revoked or terminated by the issuing or registering authority;
- 8 (3) Is invalid; or
- 9 (4) Is incapable of authentication.

10 Section 2. Requirements of official stamp.

11 (1) A notary public is not required to use an official stamp when performing notarial acts
12 with respect to electronic records.

13 (2) A notary public who uses an official stamp must use the same unique official stamp for
14 all notarial acts with respect to electronic records that are performed for an individual that is not
15 remotely located. An official stamp under this section is an official seal of office of the notary
16 public for all purposes. An official stamp must conform to the following requirements:

17 (a) Required information. An official stamp shall substantially conform to the following
18 design: a rectangular or circular seal with the notary public's name as it appears on the
19 commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public's
20 commission number, and the commission expiration date.

21 (b) Format and size. When affixed to an electronic record, an official stamp must be clear,
22 legible, and photographically reproducible. An official stamp is not required to be within a
23 minimum or maximum size when photographically reproduced on an electronic record.

1 (3) If a notary public elects not to use an official stamp when performing notarial acts with
2 respect to electronic records, the certificate of the notarial act on the electronic record must:

3 (a) Contain the name of the notary public as it appears on the notary public's commission;

4 (b) Indicate the title "Notary Public" for any notarial act with respect to electronic records;

5 and

6 (c) Indicate the notary public's commission number and the commission expiration date.

7 Section 3. Use of electronic signature and stamping device. A notary public is responsible for

8 the security of the notary public's stamping device and may not allow another individual to use

9 the device to perform a notarial act. A notary public shall take reasonable steps to maintain the

10 security of the notary signature and stamping device and shall not disclose any access

11 information used to affix the notary public's electronic signature or official stamp to electronic

12 records, except:

13 (1) When requested by the Secretary of State or a law enforcement officer;

14 (2) When required by court order or subpoena; or

15 (3) Pursuant to an agreement to facilitate notarial acts with a vendor or other technology

16 provider identified in 30 KAR 8:050, Section 7.

17 Section 4. Protection against theft, alteration or misuse.

18 (1) A notary public may not allow any other individual to alter or use his or her electronic
19 signature, notary technology, official stamp or stamping device to perform a notarial act.

20 (2) Upon resignation, revocation, or expiration of the notary's commission, the notary

21 public's notary technology and electronic stamping device (including any coding, disk, digital

22 certificate, card, software, or password that enables the notary public to attach or logically

23 associate the notary's electronic signature or official stamp to an electronic record) must be

1 destroyed or disabled to prohibit its use by any other person. A former notary public whose
2 commission terminated for a reason other than revocation or denial of renewal is not required to
3 destroy the notary public's notary technology or electronic stamping device if the former notary
4 public is recommissioned as a notary public within thirty days after the termination of the notary
5 public's former commission.

6 (3) A notary public shall promptly notify the Secretary of State on actual knowledge of
7 the theft or vandalism of the notary public's notary technology or electronic stamping device. A
8 notary public shall promptly notify the Secretary of State on actual knowledge of the
9 unauthorized use by another person of the notary public's electronic signature, notary technology
10 or electronic stamping device.

11 Section 5. Tangible copies of an electronic record. A notary public may certify that a
12 tangible copy of an electronic record is an accurate copy of the electronic record if the notary has
13 taken reasonable steps to confirm the accuracy of that certification.

14 **30 KAR 8:050. Standards for online notarial acts.**

15 RELATES TO: KRS Chapter 423

16 STATUTORY AUTHORITY: KRS 423.455

17 NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.455 authorizes the Secretary of
18 State to promulgate administrative regulations with respect to notarial acts involving remotely
19 located individuals using communication technology. This administrative regulation establishes
20 standards for the performance of online notarial acts.

21 Section 1. Notarial acts with respect to electronic records. In performing online notarial acts
22 with respect to electronic records, an online notary public must comply with the requirements for
23 electronic notarization as provided in 30 KAR 8:030.

1 Section 2. Requirements of official stamp.

2 (1) A notary public is not required to use an official stamp when performing online,
3 notarizations.

4 (2) A notary public who uses an official stamp must use the same unique official stamp for
5 all notarizations involving online notarial acts. An official stamp under this section is an official
6 seal of office of the notary public for all purposes. An official stamp must conform to the
7 following requirements:

8 (a) Required information. An official stamp shall substantially conform to the following
9 design: a rectangular or circular seal with the notary public's name as it appears on the
10 commission, the words "Commonwealth of Kentucky" and "Notary Public", the notary public's
11 commission number, and the commission expiration date.

12 (b) Online notarial acts. If an online notary public uses an official stamp to perform online
13 notarial acts, the official stamp must contain the words "Online Notary Public" in lieu of the
14 words "Notary Public." A stamp that contains the words "Online Notary Public" may only be
15 used to perform notarizations with regard to remotely located individuals.

16 (c) Format and size. When affixed to an electronic record, an official stamp must be clear,
17 legible, and photographically reproducible. An official stamp is not required to be within a
18 minimum or maximum size when photographically reproduced on an electronic record.

19 (3) If a notary public elects not to use an official stamp when performing online notarial acts
20 the certificate must:

21 (a) Contain the name of the notary public as it appears on the notary public's commission;

22 (b) Indicate the title "Online Notary Public" for any notarial act with respect to a remotely
23 located individual; and

1 (c) Indicate the notary public's commission number and the commission expiration date.

2 Section 3. Physical location. An online notary public shall be physically located in this
3 Commonwealth at the time of the performance of the online notarization.

4 Section 4. Identity proofing. If an online notary public does not have personal knowledge or
5 satisfactory evidence of the identity of a remotely located individual as defined in Section 5, the
6 online notary public must reasonably verify the individual's identity through at least two
7 different types of identity proofing processes or services. Those processes shall include remote
8 presentation of an appropriate identification by the remotely located individual, credential
9 analysis of that credential by a service or process that analyzes the person's identity credential,
10 binds the individual's identity to the individual following a successful dynamic knowledge-based
11 authentication assessment, and permits the notary to visually compare the identity credential and
12 the individual. The analysis of the identity credential and the dynamic knowledge-based
13 authentication assessment shall conform to the following requirements:

14 (1) Credential analysis. The analysis of an identity credential must use public or private data
15 sources to confirm the validity of the identity credential that is the subject of remote presentation
16 by a remotely located individual and shall, at a minimum:

17 (a) Use automated software processes to aid the online notary public in verifying the identity
18 of each remotely located individual;

19 (b) Require that the identity credential passes an authenticity test, consistent with sound
20 commercial practices that use appropriate technologies to confirm the integrity of visual,
21 physical, or cryptographic security features and to confirm that the identity credential is not
22 fraudulent or inappropriately modified;

1 (c) Use information held or published by the issuing source or an authoritative source, as
2 available and consistent with sound commercial practices, to confirm the validity of personal
3 details and identity credential details; and

4 (d) Enable the online notary public to visually compare for consistency the information and
5 photograph on the identity credential and the remotely located individual as viewed by the online
6 notary public in real time through communication technology.

7 (2) Dynamic knowledge-based authentication. A dynamic knowledge-based authentication
8 assessment is successful if it meets the following requirements:

9 (a) The remotely located individual must answer a minimum of five questions related to the
10 individual's personal history or identity formulated from public or private data sources;

11 (b) Each question must have a minimum of five possible answer choices;

12 (c) At least 80% of the questions must be answered correctly;

13 (d) All questions must be answered within two minutes;

14 (e) If the remotely located individual fails the first attempt, the individual may attempt the
15 authentication assessment one additional time within 24 hours;

16 (f) During the second authentication assessment, a minimum of 40% of the prior questions
17 must be replaced;

18 (g) If the remotely located individual fails the second authentication assessment, the
19 individual is not allowed to attempt identity authentication with the same online notary public
20 within 24 hours of the second failed authentication assessment; and

21 (h) The online notary public must not be able to see or record the questions or answers.

22 Section 5. Other methods of identity verification. An online notary public has satisfactory
23 evidence of the identity of a remotely located individual if the online notary public has personal

1 knowledge of the identity of the individual, or if the individual is identified by oath or
2 affirmation of a credible witness, or if the online notary has reasonably verified the identity of
3 the individual by use of a valid public key certificate, with the following requirements:

4 (1) Personal knowledge. An online notary public has personal knowledge of the identity of
5 the individual appearing before the online notary public if the individual is personally known to
6 the online notary public through dealings sufficient to provide reasonable certainty that the
7 individual has the identity claimed.

8 (2) Credible witness. To be a credible witness, an individual must have personal knowledge
9 of the remotely located individual who has made a statement in or executed a signature on the
10 record that is the subject of the online notarization. If the credible witness is a remotely located
11 individual, then the online notary public must reasonably verify the credible witness's identity
12 under Section 3 of this administrative regulation or have personal knowledge of the credible
13 witness under subsection 1 of this section. A credible witness may be a remotely located
14 individual if the online notary public, credible witness, and individual whose statement or
15 signature is the subject of the online notarization can communicate by using communication
16 technology.

17 (3) Public key certificate. The identity of the individual appearing before the online notary
18 public may be verified by use of a valid public key certificate that:

19 (a) meets the requirements of a digital certificate, as that term is defined in 30 KAR 8:010;

20 (b) complies with the X.509 standard adopted by the International Telecommunication Union
21 or a similar industry-standard technology; and

22 (c) is issued by a technology provider or digital certificate service registered with the

23 Secretary of State pursuant to Section 7 of this regulation.

1 A public key certificate is not valid for identity verification if the public key certificate:

- 2 (a) Has expired;
- 3 (b) Has been revoked or terminated by the issuing or registering authority;
- 4 (c) Is invalid; or
- 5 (d) Is incapable of authentication.

6 Section 6. Requirements for communication technology. The communication technology
7 used by an online notary public in the performance of online notarizations must conform to the
8 following requirements:

9 (1) Audio-video feeds. Communication technology must provide for synchronous audio-
10 video feeds of sufficient video resolution and audio clarity to enable the online notary public and
11 remotely located individual to see and speak with each other. The process must provide a means
12 for the online notary public reasonably to confirm that a record before the online notary public is
13 the same record in which the remotely located individual made a statement or on which the
14 remotely located individual executed a signature.

15 (2) Security measures. Communication technology must provide reasonable security
16 measures to prevent unauthorized access to:

- 17 (a) The live transmission of the audio-visual feeds;
- 18 (b) The methods used to perform the identify verification process under Sections 3 or 4 of
19 this administrative regulation, as applicable; and
- 20 (c) The record in which the remotely located individual made a statement or on which the
21 remotely located individual executed a signature.

1 (3) Work flow. If a remotely located individual must exit the workflow, the individual must
2 restart the identify verification process under Sections 3 or 4 of this administrative regulation, as
3 applicable, from the beginning.

4 (4) Recording. All notarial acts performed using communication technology must be
5 electronically recorded. The recording shall contain a recitation that the notary has informed the
6 individuals participating in the notarial act that it will be electronically recorded.

7 Section 7. Notary technology provider registration.

8 (1) A provider of technology used in the process of electronic or online notarization must
9 register with Secretary of State in the manner directed by the Secretary of State and
10 provide the following information:

- 11 (a) The legal name of the technology provider;
- 12 (b) The mailing address of the technology provider;
- 13 (c) The physical address of the technology provider;
- 14 (d) A designated contact person for that provider;
- 15 (e) The phone number, physical address, and email address of the contact person;
- 16 (f) The name of the technology provided;
- 17 (g) The name of the provider or providers of the knowledge-based authentication,
18 credential analysis, or digital certificate services, if different from the technology
19 provider;
- 20 (h) A description of the technology used and the manner in which it complies with KRS
21 Chapter 423 and this chapter;
- 22 (i) The process by which the technology provider verifies the identity of the notary
23 public or digital certificate holder using the technology;

- 1 (j) A plan for the retention and disposition of records created, generated or retained in
2 conjunction with the use of the technology, including, but not limited to, any
3 electronic journal, recordings or records created or retained during an electronic or
4 online notarization, in the event the technology provider no longer engages in the
5 business of providing electronic or online notary technology; and
6 (k) An authorized certification that the technology provided complies with KRS Chapter
7 423 and this chapter.

- 8 (2) A registration in compliance with this section is non-transferable and may not be
9 conveyed to any other notary technology provider.

10 Section 8. Complaint Against a Notary Technology Provider.

- 11 (1) A written complaint may be made against a notary technology provider registered with
12 the Office of the Secretary of State. A complaint that does not comply with the
13 requirements of this section will not be filed, responded to, or acted upon by the
14 Secretary of State.

- 15 (2) The Office of the Secretary of State may commence an investigation of a registered
16 notary technology provider as a result of a complaint or upon its own initiative.

- 17 (3) An investigation under this section may include:

- 18 (a) An initial request for information from the accused provider;
19 (b) A copy of the complaint forwarded to the registration provider; and
20 (c) A request for supporting documentation and other sources of information.

- 21 (4) A provider shall provide true, accurate, and complete copies of all information requested
22 by the Office of the Secretary of State.

1 (5) Failure of a provider to comply with an investigation directive may result in revocation of
2 the provider's registration.

3 (6) A finding that the provider has failed to comply with the provisions of KRS Chapter 423
4 or this chapter may result in revocation of the provider's registration.

5 Section 9. Duties of Notary Technology Provider. A notary technology provider must:

6 (1) Respond to a request for information from the Office of the Secretary of State within the
7 time directed. Any request for information will be sent to the addresses provided upon
8 registration;

9 (2) Take reasonable steps to ensure that a notary public or digital certificate holder is able to
10 use the technology provided in accordance with this chapter; and

11 (3) Suspend the use of any technology for any notary or digital certificate holder whose
12 commission, registration, or digital certificate has expired, been revoked or been
13 suspended.

14 **30 KAR 8:060. Electronic and Online Record Retention Requirements**

15 RELATES TO: KRS Chapter 423

16 STATUTORY AUTHORITY: KRS 423.455

17 NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.455 requires the Secretary of

18 State to promulgate administrative regulations implementing KRS Chapter 423. This
19 administrative regulation establishes standards for the retention of records and by notaries public
20 authorized to perform notarial acts with respect to electronic records and notarial acts involving
21 remotely located individuals using communication technology.

22 Section 1. Record retention.

- 1 (1) A notary public that is registered to perform notarial acts with respect to electronic
2 records or notarial acts involving remotely located individuals using communication
3 technology must maintain one or more journals in a permanent, tamper-evident electronic
4 format to chronicle those notarizations.
- 5 (2) A journal entry shall be made contemporaneously with the performance of the notarial
6 act and contain:
- 7 (a) The date and time of the notarial act;
 - 8 (b) A brief description of the record, if any and the type of notarial act;
 - 9 (c) The full name and address of each individual for whom a notarial act is performed;
 - 10 (d) A statement of how identification was established and a description of any
11 identification credential presented including the type of credential and dates of
12 issuance and expiration of the credential;
 - 13 (e) The fee charged, if any; and
 - 14 (f) For a notarial act involving remotely located individuals using communication
15 technology, an audio-visual recording (or a link thereto) of the performance of the
16 notarial act that complies with KRS Chapter 423 and this chapter.
- 17 (3) A journal must be created and stored in a computer or other electronic storage device or
18 process that protects the electronic journal and any audio-visual recording against
19 unauthorized access by password or cryptographic process. A recording must be created
20 in an industry-standard audio-visual file format and must not include images of any
21 record in which a remotely located individual made a statement or on which the remotely
22 located individual executed a signature.

- 1 (4) An electronic journal must be retained for at least ten (10) years after the last notarial act
2 chronicled in the journal. An audio-visual recording must be retained for at least ten (10)
3 years after the recording is made.
- 4 (5) A journal entry shall not record an identification numbers assigned to an individual by a
5 governmental agency or any biometric identifier.
- 6 (6) A notary public must take reasonable steps to ensure that a backup of the journal and
7 audio-visual recording exists and is secure from unauthorized use.
- 8 (7) On the death or adjudication of incompetency of a current or former notary public that is
9 registered to perform notarial acts with respect to electronic records or notarial acts
10 involving remotely located individuals, the online notary public's personal representative
11 or guardian or any other person knowingly in possession of a journal or audio-visual
12 recording must:
- 13 (a) Comply with the retention requirements of this subsection;
- 14 (b) Transmit the journal and recording to one or more repositories under Section 2 of this
15 administrative regulation; or
- 16 (c) Transmit the journal and recording in an industry-standard readable data storage device to
17 his/her notary technology provider.
- 18 Section 2. Repositories. A notary public that is registered to perform notarial acts with respect to
19 electronic records or notarial acts involving remotely located individuals, a guardian,
20 conservator, or agent of such a notary public, or a personal representative of such a deceased
21 online notary public may, by written contract, engage a third person to act as a repository to
22 provide the storage required by Section 1 of this administrative regulation. A third person under

1 contract under this section shall be deemed a repository or custodian under KRS 423.380 (8) or
2 KRS 423.455(5), as applicable. The contract shall:

3 (1) Enable the registered notary public, the guardian, conservator, or agent of the registered
4 notary public, or the personal representative of the deceased registered notary public to comply
5 with the retention requirements of Section 1 of this administrative regulation even if the contract
6 is terminated; or

7 (2) Provide that the information will be transferred to the registered notary public, the
8 guardian, conservator, or agent of the registered notary public, or the personal representative of
9 the deceased registered notary public if the contract is terminated.

10 Section 3. Lost, Stolen or Improperly Accessed Journal.

11 (1) A notary public is responsible for the security of the notary public's journal and may not
12 allow another individual to use the journal to perform a notarial act. A notary public shall take
13 reasonable steps to maintain the security of the journal and shall not allow access to the notary
14 public's journal, except:

15 (A) When requested by the Secretary of State or a law enforcement officer;

16 (B) When required by court order or subpoena; or

17 (C) Pursuant to an agreement to facilitate notarial acts with a vendor or other technology
18 provider identified in 30 KAR 8:050, Section 6.

19 (2) A notary public shall promptly notify the Secretary of State of a lost or stolen journal upon
20 discovering the journal is lost or stolen.

21 Section 4. Disposition of Notarial Records upon Termination of Commission or
22 Registration. Upon the revocation, resignation, termination or suspension of the commission of
23 the notary public or the revocation, resignation, termination or suspension of the registration of

1 the notary public to perform notarial acts with respect to electronic records and notarial acts
2 involving remotely located individuals using communication technology, the notary public shall
3 retain the journal in accordance with the provisions of Section 1 of this regulation.

4 **30 KAR 8:070 Notary Discipline**

5 RELATES TO: KRS Chapter 423

6 STATUTORY AUTHORITY: KRS 423.415 and KRS 423.395

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 423.415 authorizes the Secretary of
8 State to promulgate administrative regulations conditioning, denying, suspending or revoking a
9 notary commission and assuring the trustworthiness of an individual holding a commission as a
10 notary public. This emergency administrative regulation prescribes the manner of performing
11 notarial acts for tangible records.

12 Section 1. Prohibited Conduct. Failure to comply with a provision of KRS 423.395 may
13 result in the denial, refusal to renew, revocation, suspension or conditioning of a notary
14 commission and may result in disciplinary action.

15 Section 2. Conviction, Finding or Admission. Denial, refusal to renew, revocation,
16 suspension or conditioning of a notary commission shall result upon notification to the Secretary
17 of State of:

18 (1) A conviction of felony or crime involving fraud, dishonesty or deceit;

19 (2) A finding against, or admission of liability by, the notary public in any legal proceeding
20 or disciplinary action alleging fraud, dishonesty or deceit by the notary; or

21 (3) A judicial determination of liability in a suit for fraud, misrepresentation or for failure to
22 discharge the duties of a notary public.

1 A notary public shall promptly notify the Secretary of State, in writing, of a conviction, finding,
2 admission of liability, or judicial determination of liability as defined in this section.

3 Section 3. Complaint Against a Notary Public. A person that knows of a violation of
4 Section 1 or 2 may file a complaint against a notary public with the Secretary of State. A
5 complaint shall be in writing, dated, and signed by the person making the complaint. A
6 complaint that does not comply with the requirements of this section will not be filed, responded
7 to or acted upon by the Secretary of State.

8 Section 4. Any condition, restriction, suspension or revocation of a notary commission
9 will automatically have the same effect on the electronic or online registration the notary public
10 holds.

11

12

13 Alison Lundergan Grimes

14 Secretary of State

15 Commonwealth of Kentucky

16 APPROVED BY AGENCY: December 16, 2019

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Erica N. Galyon, Assistant Secretary of State, 700 Capital Avenue, State Capitol, Suite 152, Frankfort, Kentucky 40601, phone (502) 782-7417, fax (502) 564-5687. Email: sos.secretary@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the conditions under which notary public officers may be approved by the Office of the Secretary of State. Additionally, it establishes procedures for electronic and online notary applications.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish procedures for approving notary public officers and electronic and online notary publics.

(c) How this administrative regulation conforms to the content of the authorizing statutes: In order for the Office of the Secretary of State to fulfill its duties under KRS 423, this administrative regulation is necessary to establish the procedures for approving notary public applications and registrations for electronic and online notaries public.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary to establish procedures for approving notary public applications and registrations for electronic and online notaries public.

(2) N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects individual notaries public and those who voluntarily apply to be electronic and online notaries public.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Individuals identified in question (3) will have to familiarize themselves with this administrative regulation.

(b) In complying with this administrative regulation, how much will it cost each of the entities identified in question (3): Individuals identified in question (3) will incur minimal costs in order to submit an application and/or registration.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Individuals identified in question (3) will obtain the rights of a notary public and/or electronic and online notary public.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The application for notary public costs \$10; registration for electronic or online costs \$10.

(b) On a continuing basis: There is no cost to implement this administrative regulation at this time.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no source funding at this time since there is no cost to implement this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation: A fee for registration as an electronic and/or remote (online) notary is established at \$10; additional funding will not be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: Fees for notary public applications is unchanged; fees for registration for electronic or online notary public is \$10.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.