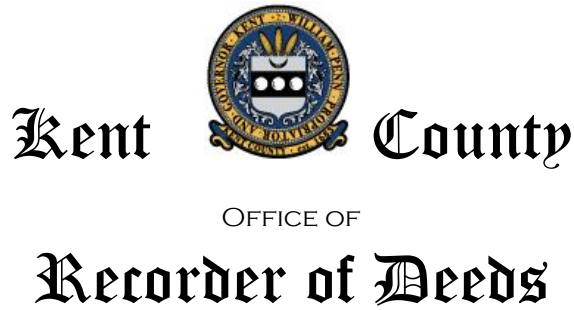


EUGENIA THORNTON
RECORDER OF DEEDS

DARIN J. DELL
DEPUTY RECORDER
OF DEEDS



KENT COUNTY
ADMINISTRATIVE COMPLEX
555 BAY ROAD
DOVER, DE 19901
(HANDICAPPED ACCESSIBLE)

PHONE: (302) 744-2314
FAX: (302) 736-2035

Kent County Policy for Accepting Notarized Materials

Prepared on October 19, 2023, updated January 19, 2024 –retroactive to August 1, 2023

[83 Del. Laws, c. 425, § 11](#)

Generally, Delaware law requires the Recorder of Deeds to record a deed presented for recording (9605(a) of Title 9)¹, providing it contains certain information, which, if not included, we are not to record (9605(d) – (i) of Title 9)².

Similarly, Delaware's Revised Uniform Law on Notarial Acts requires a notary to meet certain requirements and do certain things for in-person and remote notarizations of hard copy and electronic records to have legal effect, including a provision that we accept notarial acts performed in another state and country if performed by certain authorized individuals, including notaries (4324 of Title 29).

With the addition of the allowance for remote notarization and "security" enhancement to Delaware's law overseen by the Secretary of State, Delaware's notary law relative to deeds remains virtually unchanged from how it has functioned for 140 years.

Effective August 1, 2023, Delaware instituted a new law regarding notaries. IAW with our standing policies as outlined in the Report by the Commission for the Uniform Real Property Recording Act, we will change our policies to fit this new law. Section II, 4)³ of this report says:

Notary Acknowledgement. Transactions filed pursuant to Title 25, Chapter 1 § 180§ 181 §182 §183 §184 must comply with Title 29, Chapter 43 Notaries § 4321 to 4329 as amended from time to time.

Per the Administrator for Notary Public Section in an email dated September 21, 2023, and our own review of the law, the notarial act itself has not changed; just the matter of how it is performed has been revised and how the stamp is affixed to the document whether by hand or electronic means.

- Traditional wet signature.
- Electronic (In person means both the notary and the signer are together in the same location with an online document signed electronically.)
- Remote Online Notarization (Notary physically located in Delaware [or IAW Section 4344 one jurisdiction if out of State], the signer is another jurisdiction through audio-visual technology, provided by an approved technology provider.)

¹ <https://delcode.delaware.gov/title9/c096/index.html>

² *ibid*

³ <https://www.newcastlede.gov/DocumentCenter/View/3784/DURPERA-PDF>

Because of the revised law, hyperlinked in its entirety in the Header, Delaware is the 44th State that authorized online notarization (remote and electronic) for permanent use. The revised legislation was announced on September 9, 2022, and became effective on August 1, 2023.

Signers and notaries can use Remote Online Notary (RON) in Delaware and conduct notarization sessions through a video conferencing app. In addition, other states and countries that allow RON may send us documents to record, regardless of whether a Delaware attorney has first reviewed them. For the complete law, please click the link in the heading.

Conditions for RON are:

Registration: A notary public must register with the [Delaware Secretary of State](#) and identify the technologies they intend to use to perform RON. The Recorder of Deeds is NOT required to verify that the notary is on the register. Pursuant to Delaware Law,⁴ **"It is not the Recorder's responsibility to ensure the accuracy or legality of the documents themselves, except insofar as they qualify to be recorded. Security for that lies outside the scope of recording."**⁵

Verification: The notary must verify the signer from personal knowledge, a witness, or government identification with a signature or photograph. Additional information may also be necessary to identify the signer. At least two different types of identity proofing are required.⁶ In addition, the law requires all remote notarization sessions be recorded both audio and video.

The Recorder of Deeds is NOT required to verify this information but is required to ensure that a statement is near the signatures regarding how the identification was performed by the notary. See attached examples. The authority for this is found in the below code:

"§ 4333. Notification regarding performance of notarial act on electronic record; selection of technology; acceptance of tangible copy of electronic record.

"(c) A Recorder of Deeds may accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a record accepted for recording be an original if the notarial officer executing the notarial certificate certifies that the tangible copy is an accurate copy of the electronic record."

We will accept electronic and RON from other states and countries, if the document meets the criteria established by Delaware Law, which includes—if foreign--the requirements of the Hague Apostille Convention when appropriate. The authority for accepting from other states comes from:

⁴ <https://delcode.delaware.gov/title25/c001/sc05/index.html> 183 a, recording standards are set by the Delaware Recording Commission.

⁵ P 50, Report from the Delaware Electronic Recordings Commission which is the body the Delaware Uniform Real Property Electronic Recording Act (title 12, chapter 1, sections 180-184)
<https://www.newcastlede.gov/DocumentCenter/View/3784/DURPERA-PDF>

⁶ Proofing is defined as “process or service by which a third person provides a notarial officer with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.”

§ 4324. Notarial act in another state.

(a) A notarial act performed in another state has the same effect under the law of this State as if performed by a notarial officer of this State, if the act performed in that State is performed by any of the following:

(1) A notary public of that State.

(2) A judge, clerk, or deputy clerk of a court of that State.

(3) Any other individual authorized by the law of that State to perform the notarial act.

(b) The signature and title of an individual performing a notarial act in another state are prima facie evidence that the signature is genuine and that the individual holds the designated title.

(c) The signature and title of a notarial officer described in paragraph (a)(1) or (a)(2) of this section conclusively establish the authority of the officer to perform the notarial act.

Per the Delaware Electronic Recording Commission⁷, "While Uniform Electronic Transactions Act (UETA), 15 USCA §§ 7001 to 7031 and URPERA allow many types of electronic signatures, Recorders are only required to accept electronic signatures that they have the technology to support"⁸.

While we can accept foreign notarial certificates, they may be hard to read either because of the ink used, or the fact that it is written in a foreign language, or it is an Apostille, or a combination of these three. In this case, require the attorney handling the matter (or a notarized statement by another person of authority) to prepare a statement that certifies the document is legal and should be recorded. An example of is attached as enclosure 3. Record the clarifying statement with the document.

The revised notary law that came into effect August 1, 2023 also allows us to accept **stamped seals** and **raised seals**. Since stamped seals are PRIA standard, we have already been accepting them. Delaware Law says we must continue to accept the raised seals, so we will continue to use graphite to make them legible when they are scanned.

Regardless of personal appearance, electronic or remote, in-state or out, foreign or domestic, stamped or raised seal, the following remain in effect and should be reviewed before being accepted for recording:

A notarial act must:

- Provide a signature and title of the person performing the act
- Be evidenced by a certificate physically or electronically signed and dated by a notarial officer.

A Certificate must

- Be signed and dated by the notarial officer.

⁷ Delaware Electronic Recording Commission Report

⁸ <http://delcode.delaware.gov/title6/c012a/index.html>

- Identify the jurisdiction in which the notarial act is performed.
- Contains the title of the office the notarial officer holds.
- If the notarial officer is a Notary Public, indicate the date of expiration.

The Recorder of Deeds is not required to verify what the notary submits for recording—Delaware State law already prohibits a notary public from acting in a deceptive or fraudulent manner. We must presume, provided the format is correct, that the notary seal is recordable. Where we are unsure, we can ask the attorney handling the matter, or the person in authority to provide a notarized statement, that informs us the act is legal and in accordance with the Revised Notary Law. Record the clarifying statement along with the original document.

The adoption of the Revised Uniform Law on Notarial Acts (Senate Bill 262) does not, in and of itself, make fraud more likely. Even before the new law, fraud might be caused by:

- Someone fraudulently pretends to be a notary.
- Someone could provide fraudulent licenses or other identifying documents to a notary.
- Someone could pretend to be a member of the bar.
- *Any* of the many documents relied upon to make a deed, if fraudulent, make the deed fraudulent; this might include an intentionally incorrect or incomplete survey, a court order based on false information, or *any other* contributing fraudulent document.⁹

The only way to completely protect against fraud would be to create a cumbersome system that grinds commerce to a halt in this State.

Instead, fraud must be managed by what we are already doing:

- Ensuring that we follow the law when recording,
- Alert property owners to potential fraud through our Property Fraud Education system currently in place (fact sheets, postcards, lectures, press releases, etc.), and
- Encourage registration in US Land Records Property Fraud Alert Program or its equivalent.

For case-by-case questions not covered in this extensive policy statement, please contact the **Notary Public Section**, 401 Federal Street, Dover, DE 19901, (302) 739-3073 (press 6), notary@delaware.gov. Further information will be available on <https://notary.delaware.gov>



Hon. Eugenia Thornton
Kent County Recorder of Deeds

⁹ Elizabeth Berg, Esq during PRIA webinar, Property Fraud, May 30, 2023 (see our White Paper and Communications Plan for details)

The below is acceptable because of the verbiage, "Completed via Remote Online Notarization using 2-way Audio//Video technology." We accept stamped seals. We accept out of State. It has all the required information regarding the notary's authority. This is an area that is new regarding the signatures as they are typed in computer font. Delaware allows electronic vendors for electronic signatures to type in a name and they select a font. They have a security key they use to support the transaction. Hence, "computer selected font" is acceptable if it is used in conjunction with remote online notarization. This can be the actual document or a copy/fax of the actual document.

DP-C478221 BA-RE V-12011 Pg-116
 Loan No.: 13504992

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument and in any rider(s) executed by Borrower and recorded with it.

7/29/2023
 Date

Keandrea E Pollard (Seal)
 KEANDREA E POLLARD -Borrower

7/29/2023
 Date


Harold Rashine Pollard (Seal)
 HAROLD RACHINE POLLARD, -Borrower signing solely to acknowledge this Agreement, but not to incur any personal liability for the debt

Date
 -Borrower

Date
 -Borrower

State of Ohio §
 County of Fairfield §

The foregoing instrument was acknowledged before me this 7/29/2023, by KEANDREA E POLLARD and HAROLD RACHINE POLLARD.

(Seal)  ESTHER ROSA
 Notary Public
 State of Ohio
 My Comm. Expires
 October 16, 2027


Esther Rosa
 Notary Signature Esther Rosa
 Notary Public, State of Ohio
 My Commission Expires: 10/16/2027

Completed via Remote Online Notarization using 2 way Audio/Video technology.

DELAWARE PARTIAL CLAIM MORTGAGE Page 6 of 6
 Rev. 06/15

Below is an example of how the attorney handling a property transfer certified for us that the Apostille, which was not only in Greek, but in very light ink, met the criteria of the revised law, the Hague Apostille Convention and was appropriate to be recorded. This document was recorded along with the original Greek document. It is found in Book 12827 page 291. As an alternative to doing this, we might ask the grantor or grantee to use RON or electronic methods outlined in Del Code. They could do whichever they deemed the easiest to accomplish.

187218 Page 6 of 6



**BAIRD
BROCKSTEDT
& FEDERICO Y**

Michele D. Wenz
(302) 677-0061 MANDALAS
michele@bmbfclaw.com

January 8, 2024

Kent County Recorder of Deeds .
555 South Bay Road
Dover, DE 19901


RE: 29 Del.C. 54327: Foreign Notarial Act

To Whom It May Concern:

I, Michele D. Wenz, Esquire, a practicing attorney barred in the State of Delaware certifies that the preceding recorded deed has been notarized and conforms to the regulations set forth in the Foreign Notarial Act.

I certify the notary act was completed under 29 Del.C. {4327 (b): If the notarial act is performed under authority and in the jurisdiction of a foreign state or constituent unit of the foreign state or is performed under the authority of a multinational or international governmental organization, the act has the same effect under the law of this State as if performed by a notarial officer of this State.

Furthermore, the deed confirms to (e) of this section: An apostille in the form prescribed by the Hague Convention of October 5, 1961 , and issued by a foreign state party to the Convention conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the indicated office. The apostille certificate is attached to the recorded deed.

Respectfully,

Michele D. Wenz, Esquire

6 S. State st | Dover, DE 19901 | (302) 677-0061 | (302) 677-0065 (fax)
www.bmbfclaw.com