



COVID-19 MAY MAKE REMOTE NOTARIZATION A REALITY IN MASSACHUSETTS

Business is still being conducted even though COVID-19 has forced many to work from home. Many transactions require signatures on documents to be notarized, a process that requires the signatory to execute the document in person before a notary public. Advances in technology, coupled with demand driven by events such as COVID-19, have spurred the advent of remote notarization of signatures. As a result, federal and state legislation may soon make remote notarization a reality in Massachusetts, thereby enabling transactions to occur on a timely basis.

SECURE Notarization Act of 2020 – Federal Legislation

The federal legislation, entitled the “SECURE Notarization Act of 2020,” is embodied in Senate Bill 3533 and House Bill 6364. This act would enable the use of remote online notarization (“RON”), including:

- Allows for remote notarization across state lines of documents affecting interstate commerce.
- Permits uploading digital documents via a software platform for viewing by both the signatory and the notary.
- Permits a closing or signing to be conducted virtually and remotely via an audio-video feed.
- Permits a signature to be affixed digitally rather than by “wet” pen signature.
- Permits the signatory’s identity to be authenticated by the notary, by a third-party using public or private data sources, or by oath or affirmation of a credible witness who personally knows the signatory.
- Permits the notary to digitally notarize the signature even though not in the signatory’s presence.
- Permits the document to be digitally recorded or filed or alternatively to be converted into paper.
- Requires a copy of the audio-video conference and the authentication data to be digitally stored for verification purposes, if later necessary.

The federal act authorizing RON has not yet been passed and it is questionable as to whether the Commonwealth of Massachusetts, lenders, recording offices, or courts will accept the practice even if it is passed. If adopted, the federal act would permit immediate use of RON and would provide certainty for the interstate recognition of documents executed and notarized by this method. The federal act would not be limited to the duration of the COVID-19 emergency. However, if passed, the federal act and the use of RON will not change Massachusetts’ practice prohibiting non-attorneys from engaging in acts deemed to be the practice of law.

An Act Relative to Remote Notarization During COVID-19 State of Emergency – MA Legislation

The state legislation, entitled “An Act Relative to Remote Notarization During COVID-19 State of Emergency,” is embodied in Senate Bill No. 2882 and House Bill No. 4999. The state act would enable the use of video-conferenced in-home notarization (“VIN”), including:

- Requires both the signatory and the notary to be physically present in Massachusetts.
- Entails delivery of a paper document or closing package to be sent to the signatory.
- Entails use of a software platform creating a real-time audio-video feed between the signatory and the notary.

- Contemplates a virtual closing or meeting between the signatory and an attorney or paralegal, both of whom are Massachusetts licensed notaries, during which the notary observes the documents being signed.
- Requires the signatory to present to the attorney or paralegal via the video feed the front and back of their form of identification credential.
- Requires the signatory to sign and thereafter deliver “wet” signature paper documents to the attorney or paralegal, together with a copy of the front and back of their form of identification credential.
- Requires a second audio-video conference between the signatory and the attorney or paralegal during which the attorney/paralegal takes the acknowledgement of the signatory and affixes his/her signature and stamp to the “wet” signature documents.
- Requires the attorney/paralegal to recite in the document notary block that the acknowledgement was taken electronically pursuant to the Massachusetts act.
- Requires the attorney/paralegal to execute an affidavit attesting to the fact that the document was executed and acknowledged pursuant to the provisions of the act.
- Requires a copy of the audio-video conference and the authentication data to be digitally stored for verification purposes for up to 10 years.

VIN is not yet legal in Massachusetts and is not yet fully accepted by lenders, recording offices, or courts. If adopted, the state legislation would permit immediate use of VIN and would provide certainty for documents executed and notarized by this method. The Massachusetts act may be limited to the duration of the COVID-19 state of emergency declared by Governor Baker on March 10, 2020. If passed, the Massachusetts act and the use of VIN will not change Massachusetts practice prohibiting non-attorneys from engaging in acts deemed to be the practice of law, but it will permit the notarization of documents while respecting social distancing.

Conclusion

The adoption of legislation enabling the use of RON or VIN will overcome a major hurdle presented by the “social distancing” mandate resulting from the COVID-19 pandemic, namely the Massachusetts requirement that a document signatory personally appear before the notary in order for their signature to be lawfully acknowledged. The advent of proposed federal and state legislation, together with the creative use of software platforms, will enable parties to overcome this hurdle and will permit the timely completion of transactions.

We will continue to monitor the status of the federal and state legislation. For more information, please contact a member of Bulkley Richardson’s COVID-19 Response Team.

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