

Notarizing By Video Chat: Massachusetts Temporarily Allows Remote Notarization

With the closure of non-essential businesses, stay-at-home orders, and social distancing in light of the Covid-19 pandemic, the challenges and risks associated with meeting a notary in person has become a significant obstacle in many transactions – until now. During the Covid-19 state of emergency, documents may be notarized “remotely” under the emergency measure signed by Governor Baker on April 27, 2020: *An Act Providing for Virtual Notarization to Address Challenges Related to Covid-19, Chapter 71 of the Acts of 2020* (the “Act”).

In lieu of meeting a notary face to face, a person (the “principal”) can sign a document in the safety of his/her home, while the notary observes in real time by videoconference. The details and requirements of this new procedure are laid out in the Act, and summarized below.

General Procedure

Any notarization that takes place under the Act must meet these requirements:

- **Recording:** Notary must record (audio and video) the performance of the notarial act, and must obtain the principal’s assent to recording.
- **Live Signature:** Notary must observe the principal sign the document over videoconference in real time. Note that this differs from “in person” notarization, where a principal acknowledges their signature to the notary after having signed.
- **Location:** Both notary and principal must then be physically present in Massachusetts, and the principal must affirm this in the videoconference.
- **Identification:** Unless the principal is personally known to the notary, their identity must be confirmed by a current ID issued by a state or federal government agency, showing their photograph and signature. The principal must show the ID on the videoconference, and transmit a copy (both front and back, or if a passport, pages showing the front cover, photograph, and signature) to the notary, either electronically or together with the signed document.
- **Presence of Other Persons:** Principal must disclose and make visible to the notary any other persons present in the room during the videoconference. If any, the principal must provide their names and relationship to the principal.
- **Delivery and Completion:** Principal should then deliver the original document to the notary, who will stamp and sign, completing the process.

- **Duration**: Documents may be notarized by this process from April 27, 2020, until the date that is three business days after the termination of the Covid-19 state of emergency in Massachusetts.

Real Estate Transactions

Any document requiring notarization that is executed for a transaction “involving a mortgage or other conveyance of title to real estate” must meet the following *additional* requirements:

- **Notary**: The notary must be an attorney, or a paralegal under direct supervision by an attorney who is a notary.
- **Identification**: If the principal is not personally known to the notary, then during the first videoconference they must provide secondary ID that shows their name, and that either (i) contains their photograph or signature, or (ii) is issued by a government entity (i.e. credit or debit card, social security card, or municipal tax or utility bill dated within 60 days of the first videoconference).
- **Second Videoconference**: After the original document is received, the notary and principal must hold a second recorded videoconference. The principal must again verbally assent to the recording of the videoconference, affirm that he or she is physically present in Massachusetts, and identify if there are any other persons in the room, and if so their name and relationship to the principal. Then, the principal must verify that the document received is the original from the first videoconference. The notary may then stamp and sign the document, completing the process.

Considerations for Notaries

In addition to the requirements above, notaries should be mindful of the following:

- **Recital and Certificate**: The notary block should: (i) state that it was notarized remotely under the Act; and (ii) list the county where the notary was located, and the date when notarization was completed (i.e. when stamped and signed by the notary), except that real estate documents may recite the date within the body of the document, even if earlier than the date of notarization.
- **Records**: Notary must retain the recording and the copy of principal’s ID for ten years.
- **Affidavit**: Notary must sign an affidavit confirming under the penalties of perjury that: (i) if applicable, the notary received a copy of the principal’s ID, and inspected it during the first videoconference; (ii) the principal verbally assented to any recording

of videoconferences; (iii) the principal affirmed he or she was physically present in the Commonwealth; and (iv) the notary was informed if any other persons were present in the room, and if so states their name and relationship to the principal. This affidavit must be retained for ten years.

With seven weeks since the state of emergency was declared in Massachusetts, and (at least) three more weeks of non-essential business closures ahead, this Act will be instrumental in facilitating many legal transactions as well as regular business – from municipal governance, to real estate closings, to estate planning – until we can return to business as usual.

Anderson & Kreiger is equipped with the necessary technology, and available to assist clients with their remote notarization needs during this time.