

Alert

Remote Notarization in New York State: Temporary Authorization in Response to COVID-19

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The COVID-19 pandemic has severely disrupted the daily lives of individuals and businesses across the United States as the federal and local governments continue to enact restrictions and preventative measures to stem the tide of infection.

This *Alert* focuses on some of the logistical issues of notarizing documents in person while abiding by restrictions to work remotely and maintain social distancing through the utilization of Remote Online Notarizations in New York State.

Pursuant to Governor Cuomo's Executive Order No. 202.7, New York State notaries are permitted to notarize documents using audio-visual technology through April 18, 2020. This temporary transition to remote notarization is intended to facilitate legal transactions while maintaining the social-distancing measures enacted in New York and across the county in response to the COVID-19 crisis.

Remote notarization allows a signer who would traditionally appear in person before a notary to meet with the notary virtually using audio-visual technology. States that have authorized remote notarization require the notary to verify the signer's identity through authentication methods such as a credential check or the use of third-party identity verification systems. In addition, notaries must keep both a journal and an audio-visual recording of the notarization. Typically, a signer can be situated in any state as long as the notary is present in the state in which he or she is commissioned.

Pursuant to the New York State Executive Order, parties using remote notarization must meet conditions which vary slightly from those required by other states. The signer must present valid photo identification to the notary during the videoconference, and both the signer and notary must be present in New York State. The notary does not need to make an audio-visual recording of the session. The complete list of conditions is below:

- The person seeking the notary's services, if not personally known to the notary, must present valid photo ID to the notary during the videoconference, not merely transmit it prior to or after;
- The videoconference must allow for direct interaction between the person and the notary (e.g., no pre-recorded videos of the person signing);
- The person must affirmatively represent that he or she is physically situated in the state of New York;
- The person must transmit by fax or electronic means a legible copy of the signed document directly to the notary on the same date it was signed;

- The notary may notarize the transmitted copy of the document and transmit the same back to the person; and
- The notary may repeat the notarization of the original signed document as of the date of execution provided the notary receives such original signed document together with the electronically notarized copy within thirty days after the date of execution.

State authorization of remote notarization is a growing trend throughout the United States. Twenty three states have passed authorizing legislation, although many of these laws are pending full implementation. In addition, measures allowing for the temporary use of remote notarization during the COVID-19 crisis have been enacted outside of New York, in Connecticut, New Hampshire and Vermont (Vermont allows remote notarization for paper documents only). More narrowly, Pennsylvania is temporarily allowing the use of remote notarization for all commercial real estate transactions and for personal real estate transactions that were in process at the time of Pennsylvania's COVID-19 disaster declaration. Finally, Iowa, Washington and Wisconsin, which each have remote notarization legislation becoming effective later this year, have authorized the interim use of remote notarization.

Remote notarization will make executing deals during the COVID-19 crisis simpler and safer for signers and notaries. However, questions have arisen regarding the acceptance for recordation of these documents by out-of-state recorder's offices. For example, will a document remotely notarized in New York be accepted for recording in a state which does not allow remote notarization, such as California?

Currently, there is no uniform legislation governing a state's acceptance of remotely notarized documents. Generally, a state will accept documents notarized in a second state for recording if the document accords the laws of the second state, and a state which allows remote notarization will accept documents remotely notarized in other states. However, each state ultimately sets its own rules about which remotely notarized out-of-state documents it will accept for recording.

A bipartisan bill titled the Securing and Enabling Commerce Using Remote and Electronic Notarization Act of 2020 ("SECURE Notarization Act"), introduced in Congress on March 18, 2020, would set minimum standards for remote notarization in each state and would require states to accept remotely notarized out-of-state documents which affect interstate commerce. However, the bill has run into some resistance from states, including California, concerned that the bill impinges upon states' rights.

Until any such widespread acceptance of remote notarization, out-of-state remotely notarized documents will likely be accepted for recording in the states which already permit the use of remote notarization, but parties seeking to record such documents should consult with the relevant recorder's office about the office's requirements. As some county recorders' offices may be subject to closures or limited operating hours during the COVID-19 outbreak, the [ALTA Recording Jurisdictions – Operating Status](#) tool may serve as a reference regarding the best methods of contact.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or the author.

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