



Governor Cuomo Issues Executive Order Authorizing Remote Notary Services

Syracuse ♦ Ithaca ♦ New York City

March 2020

With the current physical distancing measures and widespread business closures throughout New York State due to the continuing health crisis with the spread of COVID-19, the legal and business industry faced a serious impediment to business. Many legal documents requiring notarization services for signatures were threatened due to the inability or fear of individuals meeting or congregating in person to allow for witnessing of documents. In many scenarios the question was asked, how can any estate planning documents, contracts, deeds, or other business-related documents be completed under the circumstances?

Under the current New York Notary Public Licensing Law, a notary must appear in person to witness a signature and to notarize a document. However, having taken note of the difficulties that the spread of COVID-19 would present on this process, the Governor signed Executive Order No. 202.7 on March 19, 2020 which, among other matters, addressed this topic. The Executive Order enables licensed notaries to serve as "remote" notaries and to perform their duties utilizing audio-video technology provided specific conditions are met. The conditions set by the Governor are as follows:

1. If the notary does not know the person signing the document(s), the individual must present a valid photo ID to the notary during the video conference, not provide it before or after;
2. The video conference must enable both the signor and the notary to have direct interaction between the two of them – pre-recorded videos of signings are prohibited;
3. The signor must affirmatively represent that he or she is situated in the State of New York;
4. After signing the document(s) on the video transmission, the signor must then, contemporaneously transmit to the notary, by fax or other electronic means;
5. Upon receiving the electronic transmission, the notary must then themselves notarize the electronic copy of the signed document and then contemporaneously transmit the same document back to the signor by the same electronic means;
6. Once this has been accomplished, the signor should mail the original document (without the notary's signature) to the notary;
7. Upon receipt of the original, the notary may then notarize the original document and date the notarization as of the date of the electronically notarized document;
8. Notarization of the original has to be accomplished within thirty (30) days after the date of the execution.

These directives are only in place until April 18, 2020 unless they are extended by a subsequent executive order.

Bousquet Holstein has already been able to accomplish the remote notarization process outlined above successfully in the last few days with a document related to an estate administrative proceeding. It should be noted, however, that the recent executive order will be effective for every legal transaction. However, the NYSBA Real Property Division indicated that while the measures outlined in the executive order could be effective with property transactions, the division has some reservations due to the risks associated with the lack of provisions focused on tech security, identity protection and fraud safeguards commonly found in other Remote Online Notarization ("RON") statutes in other jurisdictions. There could be significant barriers at county recording offices as well that may not allow for the recording of such notarized documents and even if allowed, there could be legitimate legal questions to the notarization's legitimacy if the document were ever contested and adjudicated. In cases dealing with real property, the suggestion has been that both attorneys and clients should always check first with the title insurance provider for specific guidance on whether they will issue a policy that will cover documents notarized under the executive order procedure outlined above. With other transactions, including trusts and estates, the general inclination among practitioners is that under the current circumstances, if it can be shown that as many safeguards are taken to ensure identity and contemporaneous execution, then most, if not all courts and institutions should acknowledge and uphold the validity of the notarization.

Continued on next page



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Despite the known difficulties that exist now due to "physical distancing" measures and temporary business closures from COVID-19 transmission, Bousquet Holstein continues to consider all possible options to ensure that execution and notarization of documents can be done properly under New York law and will be valid and enforceable. That said, our office is continually working on creative methods to help provide notary services to our clients in the most efficient manner while protecting everyone's safety.

Should you have any further questions on this topic or others, please do not hesitate to contact our firm at 315-412-1500.

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