

**PENNSYLVANIA BAR ASSOCIATION
REAL PROPERTY, PROBATE AND TRUST LAW SECTION
ELDER LAW SECTION
BUSINESS LAW SECTION
SOLO AND SMALL FIRM SECTION**

RECOMMENDATION

The Real Property, Probate and Trust Law Section, Elder Law Section, Business Law Section and the Solo and Small Firm Section recommend that the Pennsylvania Bar Association support the enactment of legislation and/or executive action similar to Senate Bill 1097 and House Bill 2370 , with certain modifications, which amends the Uniform Law on Notarial Acts to provide for notarization of documents remotely via the use of communication technology, by providing for the use of communication technology to notarize the signature of a remotely located individual, “Communication Technology” being defined as “an electronic device or process that: (1) allows a Notary Public located within the Commonwealth of Pennsylvania and a remotely located individual to communicate with each other simultaneously by sight and sound and (2) making reasonable accommodations for an individual with a vision, hearing or speech impairment” so as to obviate the necessity that a Notary be in the presence of the individual executing the document to be notarized.

REPORT

The urgency of this legislation is underscored by the inability of many senior citizens and infirm individuals to update their estate-planning documents and their end-of-life decisions, and by the necessity for completing consumer and commercial transactions which depend on notarized documents. The COVID-19 crisis makes it difficult or impossible for a notary public to perform his or her duty including the requirement that the notarial act must be before or in the presence of the notary public. It is being proposed that the Uniform Law on Notarial Acts be amended to provide for execution and notarization of documents executed by an individual outside the physical presence of the Notary Public notarizing the document. The amendment proposes the standard to be used for remote execution and notarization and identification of the individual whose signature is being notarized, but further providing for regulations to be adopted by the Department of State to implement the Act and to approve the specific method of “communication technology” or “identity proofing.”

The proposed legislation goes beyond that which should be deemed necessary during the present emergency to properly identify the individual whose signature is to be notarized, as the proposed legislation sets forth the standards the Notary Public is to follow in making property identification. Moreover, the proposed legislation provides for

a mechanism by which the Notary Public and remote individual relate to each other by sight and sound, keeping in mind that technological advances arise quickly.

Both of these provisions negate the necessity for the lengthy process of adopting regulations to implement the Act. Additionally, the Act should be self-actuating, eliminating the necessity of Notaries reporting to the Department of State their use of remote notarization of documents. The fact that one has been licensed as a Notary Public in the Commonwealth should be sufficient for the Notary to perform all notarial acts authorized by the Act and to be bound by its requirements and the various acknowledgement statutes.

Not only does the Act provide for safeguards via retention of video records of a remote notarization, but sets forth the requirements for proper identification of the person whose signature is being notarized, and also the location of the person whose signature is being notarized at the time of the execution and notarization. It further requires a Notary to follow the same protocols for notarizing documents and record keeping for live notarizations, while permitting remote notarization using current technology.

As formal regulations by the Department of State are necessary, in the long run, to avoid fraud and abuse of remote notarization, the legislative authority granted in these bills should expire after one (1) year, if permanent regulations are not adopted by the Department of State by that time. Moreover, the adoption of remote notarization should have no impact on the requisites of the formalities of executing documents, but rather shall operate as another means for notarizing a document that requires notarization for its validity and/or use. Lastly, we believe the entire interaction between the Notary Public and the signer should be retained via audio and video file, and not merely the notarial act itself. Thus, the language in the bill should, if possible, be amended to read:

§ 314.1. b. (3) The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act, including all interactions between the notary public and the remotely located individual.

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****Unanimously approved, as amended, by the Board of Governors March 27, 2020.***