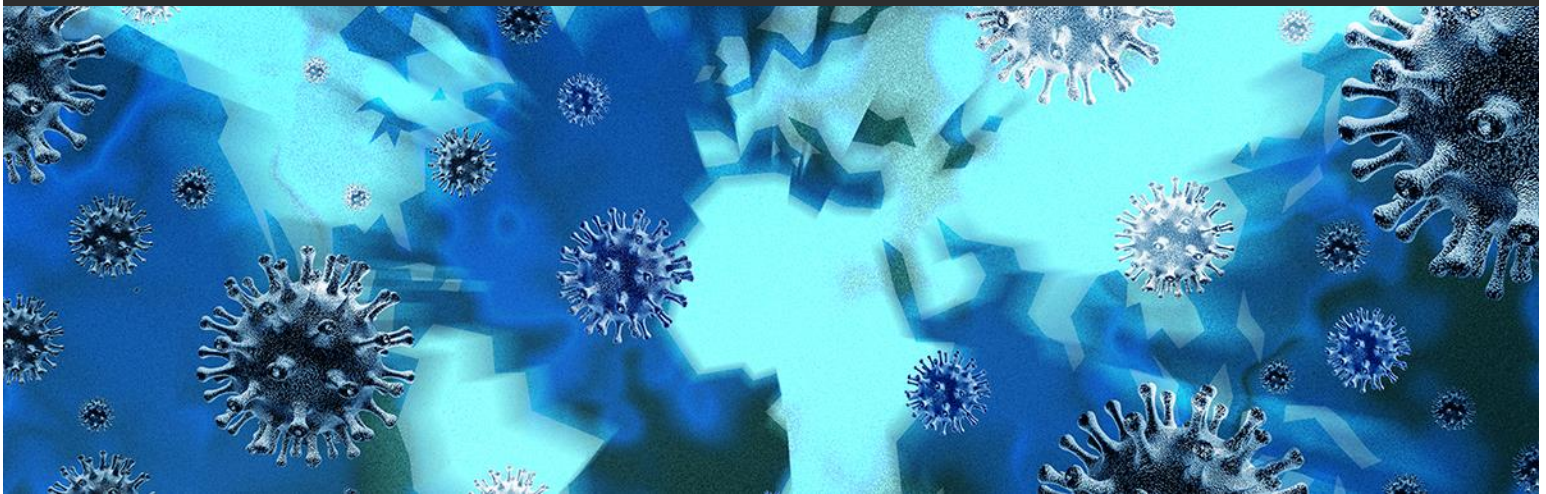


**Alert | Health Emergency Preparedness Task Force:
Coronavirus Disease 2019**



May 2020

Remote Notarization in Light of COVID-19

Real estate transactions in the United States commonly involve the execution and delivery of written instruments that must be notarized to be recorded. The most common of these instruments are deeds and mortgages.

The prevailing and traditional method of notarizing an instrument – the physical presence method – requires the person executing an instrument to physically appear before the notary public. Over the course of the past decade an increasing number of states have passed “remote notarization” legislation in order to permit the notarization of documents and records without requiring the signatory to appear in person before the notary public. Generally, remote notarization is where a signatory appears virtually before a notary public at the time of the notarization over the internet by using audio-visual technology. The restrictions and requirements related to remote notarization vary state-by-state.

Prior to the COVID-19 pandemic, approximately 45% of states permitted some manner of remote notarization. As the COVID-19 pandemic progresses, additional states are passing orders and legislation that either permanently or temporarily permits remote notarization. Since the onset of the COVID-19 pandemic, Pennsylvania, New Jersey, and New York have each authorized remote notarization on a temporary basis (however, the New York executive order authorizing remote notarization has lapsed as of the date of this alert). New Jersey and Pennsylvania currently have legislation pending, which if approved, would permit remote notarization on a permanent basis.

Pennsylvania

Prior to the enactment of the PA Temporary Remote Online Notarization (RON) Statute (as defined below), Pennsylvania law prohibited a notary public from notarizing the execution of an instrument unless the signatory physically appeared in-person before the notary public.

On April 20, 2020, in response to the COVID-19 pandemic, Gov. Tom Wolf signed into law [Senate Bill 841](#) (the PA Temporary RON Statute). The PA Temporary RON Statute was effective immediately and authorizes notaries public in the Commonwealth of Pennsylvania to perform notarial acts facilitated by communication technology for remotely located individuals (subject to compliance with the related requirements of the PA Temporary RON Statute). The PA Temporary RON Statute defines “remotely located individuals” as individuals who are not physically present before the notary public performing a notarial act and “communication technology” as an electronic device or process that (1) allows a notary public located in the Commonwealth of Pennsylvania and a remotely located individual to communicate with each other simultaneously by sight and sound and (2) makes reasonable accommodations for those with vision, hearing, or speech disabilities.

The PA Temporary RON Statute is effective until the date that is 60 days after the termination or expiration of the COVID-19 Disaster Emergency (the emergency is still in effect as of the date of this alert).

The PA Temporary RON Statute requires the following for a notary public located in the Commonwealth of Pennsylvania to perform a notarial act facilitated by communication technology for a remotely located individual:

1. The notary public must either have (1) personal knowledge of the remotely located individual’s identity (in accordance with 57 Pa.C.S. §307(a), which sets the standard for personal knowledge), (2) satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing (either in person or remotely) before the notary public (to be credible, the witness must be personally known to the notary public), or (3) reasonably identified the individual by at least two different types of identity proofing. Identity proofing is a process or service by which a third person provides a notary public with a means to verify the identity of the remotely located individual by a review of personal information from public or private data sources.¹
2. The notary public must be able to reasonably identify a record before the notary public as the same record that the remotely located individual either (1) made the statement or (2) executed the signature.²
3. The notary public, or a person acting on behalf of the notary public, must create an audio-visual recording of the performance of the notarial act, including all interactions between the notary public and the remotely located individual.

¹ The websites that facilitate the remote notarization generally perform the identity proofing as well. The PA Department of State only permits certain vendors to process remote notarization. [See the list of providers \(as of the date of this Alert\) here.](#)

² The audio-visual recording of the performance of the notarial act must be retained by a repository designated by or on behalf of the notary public for at least 10 years after the recording is created. The apparent reason behind this requirement is to protect against fraud.

4. The certificate of the notarial act must indicate that the notarial act was performed by means of communication technology.³
5. The notary public must have notified the PA Department of State that the notary public will be performing notarial acts facilitated by communication technology and identify the technology being utilized.

Because the PA Temporary RON Statute does not address whether a notarial act will be deemed invalid if the notary public failed to register with the PA Department of State as required by the PA Temporary RON Statute, people seeking remote notarization services may wish to ask the notary public to provide evidence that the notary public has satisfied the requirement to notify the PA Department of State.

If the remotely located individual is located outside of the United States, there are additional requirements.

Importantly, the PA Temporary RON Statute provides that a recorder of deeds *may* accept for recording a tangible copy of an electronic record containing a notarial certificate as satisfying any requirements that the record be an original, if the notarial officer executing the notarial certificate also certifies that the tangible copy is a true and correct copy of the electronic record. The PA Temporary RON Statute also empowers notaries public to make such a certification.

New Jersey

On April 14, 2020, in response to the COVID-19 pandemic, Gov. Phil Murphy signed into law [Assembly Bill 3903](#) (the NJ Temporary RON Statute). The NJ Temporary RON Statute, like its Pennsylvania counterpart, was effective immediately and authorizes notaries public, and other officers authorized to take oaths, affirmations, affidavits, and acknowledgements to perform notarial acts using communication technology for remotely located individuals (subject to compliance with the related requirements of the NJ Temporary RON Statute). The NJ Temporary RON Statute has other similarities to the PA Temporary RON Statute, including similar definitions for the terms “remotely located individuals,” “communication technology,” and “identity proofing,” similar requirements for verifying the identity of the remotely located individual, retention of the audio-visual record, and specifically indicating that the notarial act was performed using communication technology, and similar requirements that are applicable only if the remotely located individual is located outside of the United States. There are notable differences between the two temporary remote notarization acts, including:

1. The NJ Temporary RON Statute loses effect upon the lifting of the public health emergency and state of emergency declared by Gov. Murphy.
2. The NJ Temporary RON Statute applies not just to notaries public but also to officers authorized to take oaths, affirmations, and affidavits under R.S. 41:2-1 and acknowledgements under R.S. 46:14-6.1 (these authorized officers include but are not limited to certain elected officials, judges, and attorneys licensed to practice in New Jersey).
3. The NJ Temporary RON Statute is not “universally applicable.” Remote notarizations pursuant to the NJ Temporary RON Statute are not permitted if the record being submitted for notarization is governed by a law governing the creation and execution of wills or codicils; the Uniform

³ 57 PA.C.S. §§315-316 set forth requirements applicable to notarial certificates. The following statement is sufficient to indicate the notarial act was performed by means of communication technology per the PA Temporary RON Statute: “this notarial act involved the use of communication technology.”

Commercial Code as enacted by the State of New Jersey (excluding, however, the “Sales” and “Leases” chapters); or a statute, regulation or other rule of law governing adoption, divorce, or other matters of family law.

4. The NJ Temporary RON Statute permits (but does not require) the New Jersey State Treasurer to adopt rules or append provisions regarding the means of performing a remote notarial act, standards for communication technology and identity proofing, and standards for retention of the audio-visual record.
5. The NJ Temporary RON Statute does not expressly address whether recorders of deeds are required to accept deeds and other documents for recording that were notarized utilizing communication technology.

New York

On March 7, 2020, in response to the COVID-19 pandemic, Gov. Andrew Cuomo issued [Executive Order 202.7](#) (the NY Emergency Order) declaring a state disaster emergency for the entire State of New York. The NY Emergency Order (as supplemented by further guidance from the New York Department of State on March 31, 2020) permits remote notarizations when the following requirements are met.⁴

1. If the person seeking notarial services is not personally known to the notary public, the person must present valid photo identification during the video conference (not before or after).
2. The video conference must allow for direct interaction between the person seeking notarial services and the notary public (i.e., a pre-recorded video of the person signing is not sufficient to meet the requirements of the NY Emergency Order).
3. The person seeking notarial services must affirmatively represent that he/she is physically located in the state of New York (i.e., Unlike the PA Temporary RON Statute, the NJ Temporary RON Statute, and laws in other jurisdictions permitting remote notarization, in New York the person receiving notarial services must be physically located within the state).
4. The person seeking notarial services must transmit by fax or electronic means a legible copy of the signed document directly to the notary on the same day it was signed. The NY DOS Guidelines require the notary public to print and sign the document, **in ink**, and prohibit the notary public from using an electronic signature. The signatory, however, is permitted to use electronic signatures, if permitted by the NY Electronic Signatures and Records Act and so long as the notary public witnesses the electronic signature being applied to the document being notarized.
5. The notary may notarize the transmitted copy of the document and transmit the same back to the person.
6. 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 30 days after the execution.

Even though some jurisdictions now have frameworks in place for remote notarizations, practice has not caught up to the law. Some lenders and title companies are reticent to close deals, especially large deals,

⁴ The NY Emergency Order expires May 7, 2020, but is expected to be renewed. Renewal of the NY Emergency Order should be confirmed following May 7, 2020.

where documents are remotely notarized, given the novelty of the process. This hesitation also applies to transactions involving electronic documents, electronic signatures, and electronic notarization,⁵ even though almost every jurisdiction has adopted versions of the Uniform Electronic Recording Act and the Uniform Real Property Electronic Recording Act. Lenders and title companies are making decisions on a deal-by-deal and county-by-county basis as to the acceptability of remotely notarized and electronic documents. At a minimum, lenders and title companies will look for the recording office in question to confirm that it will accept remotely notarized or electronic documents.

For more information and updates on the developing COVID-19 situation, visit [GT's Health Emergency Preparedness Task Force: Coronavirus Disease 2019](#).

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⁵ Electronic notarization is different from remote notarization. Electronic notarization refers to the electronic notarization of an electronic document that was electronically signed by a person physically present in front of the notary.