

Member Advisory:

NEW STATE LAW WILL ALLOW REMOTE NOTARIZATION

Back in 2020, the Massachusetts legislature enacted a law allowing the remote notarization of documents, commercial and residential alike, during the state of emergency triggered by the coronavirus pandemic. Although that law is set to expire, it has now been replaced with new statutory provisions designed to make remote notarization a permanent alternative to in-person acknowledgments. The new statute won't take effect until January 1, 2024. In the meantime, the Secretary of State (who opposed the legislation) will need to promulgate rules and regulations specifying how remote notarization will work. In addition, any notary wishing to perform remote notarizations will be required to register with the Secretary, who is authorized to require candidates to complete an educational course on the subject.

For now, here's an outline of what to expect:

- Remote notarization will need to utilize a “tamper-evident” technology which can be counted on to identify any changes made to the notary's records.
- Notaries will be permitted to sign and stamp documents electronically.
- A tangible copy of an electronic notarization, certified as accurate by the notary, will be sufficient for recording at the Registry of Deeds, although special rules may apply to so-called “registered land” under the jurisdiction of the Land Court.
- The notarization must be performed during a “single, real-time session”.
- The notary will be responsible for creating an audio-visual recording of the performance of the notarization. These recordings must be retained for at least ten years and made available to the parties to the relevant transaction as well as title insurers and legal enforcement agencies.
- Remote notarization is unavailable in the case of election documents or wills.
- A notary performing a remote notarization must be physically located in Massachusetts and be able to confirm the identity of the person whose signature is being acknowledged; alternative forms of identification include personal knowledge, the affirmation of a credible, disinterested witness personally known to the notary or two forms of “identity proofing” to be established by the Secretary.
- If a document is notarized remotely, the notary's certificate must so indicate, identifying the notary's location and that of the person whose signature was acknowledged.
- In the case of sales or financings involving a one-four family residential dwelling, remote notarizations may be performed only by an attorney or a person

supervised by or acting pursuant to a direct request by the attorney handling the closing.

More information will be available once the Secretary's rules and regulations are in place.

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