

COVID-19: MASSACHUSETTS JOINS THE FIVE OTHER NEW ENGLAND STATES IN TEMPORARILY PERMITTING REMOTE NOTARIZATION

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On 27 April 2020, Massachusetts Governor Charlie Baker signed Senate Bill 2645, “An Act Providing for Virtual Notarization to Address Challenges Related to COVID-19” (the Act) into law. With the enactment of this law, Massachusetts joins the other five New England states—Connecticut, Maine, New Hampshire, Rhode Island, and Vermont—in temporarily permitting remote notarization through the use of videoconferencing technology.¹ Like the remote notarization provisions in effect across the region, the Act allows individuals and businesses to get documents notarized while complying with social distancing and other health and safety guidelines.

For the duration of the State of Emergency declared on March 10, 2020,² individuals in Massachusetts seeking to have documents notarized by a Massachusetts notary no longer need to appear in person to do so. Instead, the notarization can take place over a videoconference, subject to the following requirements:³

- **Introduction:** The signatory must provide “satisfactory evidence of identity,” based on (a) presentation during the videoconference of a current ID issued by a federal or state government agency bearing a photographic image of the signatory’s face and a signature, or (b) the notary’s personal knowledge of the signatory. If “satisfactory evidence of identity” is established by a government-issued ID, the signatory must visually display the ID to the notary during the videoconference and transmit a copy of the front and back of the ID to the notary, either with the executed document or separately through electronic means. The notary must retain a copy of the signatory’s ID for a period of 10 years. Note that the signatory must disclose all persons present in the room with them, including all persons’ names and relationships to the signatory, and those persons must be viewable to the notary throughout the notarization.
- **Recording:** The notary must create an audiovisual recording of the notarization and retain the recording for a period of 10 years.
- **Geographic Requirements:** The notary must be physically located in Massachusetts, and the signatory must swear under penalty of perjury that they are also physically located in Massachusetts.
- **Notary Affidavit:** The notary must execute, and retain for a period of 10 years, an affidavit confirming that the notary has (a) if applicable, visually inspected the credential during the videoconference and received a copy of the signatory’s ID; (b) obtained the signatory’s assent to the audiovisual recording of the videoconference; (c) received the affirmation of the signatory that he or she is physically present in

Massachusetts; and (d) been informed of any persons present in the room with a signatory, and if there are any such persons, their name(s) and relation(s) to the signatory must be noted in the affidavit.

- **Document Transmission:** Once executed by the signatory, the document must be delivered to the notary by delivery service, courier, or some other means. The notary then affixes the notary's stamp and signature to the executed document with a recital on the notarial certificate indicating the county in which the notary was located at time of notarization, the date, and that the document was notarized remotely. The notarization is complete upon the affixing of the notary's stamp and signature. For a notarization done in connection with a "mortgage financing transaction," the notarial certificate may recite the date stated within the body of the document, even if that date precedes the date of the completion of the notarization.

Notably, the Act sets out specific provisions for certain types of documents:

- **Documents Executed in the Course of a Real Estate Closing:**⁴ On receipt of documents signed in the course of a real estate closing, the notary and the signatory must have a second videoconference during which the signatory verifies to the notary that the documents received by the notary are the same documents executed during the first videoconference. Additionally, if a signatory is not known to the notary and proves their identity through presentation of government-issued identification, that person must also present a secondary form of identification containing their name, such as a credit or debit card, a social security card, or a municipal tax bill or utility bill, during the first videoconference. Only a Massachusetts-licensed attorney, or a paralegal under the direct supervision of such an attorney, may remotely notarize documents executed in the course of closing a transaction involving a mortgage or other conveyance of real estate.
- **Wills, Nominations of Guardians or Conservators, Caregiver Authorization Affidavits, Trusts, Durable Powers of Attorney, and Healthcare Proxies or Authorizations Under the Health Insurance Portability and Accountability Act of 1996:** Only a Massachusetts-licensed attorney, or a paralegal under the direct supervision of such an attorney, may remotely notarize these types of documents. In addition, the Act provides that these documents shall be considered "complete," or effective, "when all original counterparts and the notary public's affidavit are compiled."

With the Act in effect, virtual or remote notarization is now temporarily available across all six New England states. K&L Gates will continue to monitor changes to the remote notarization provisions in effect across New England as part of its broader coverage of governmental responses to the ongoing COVID-19 crisis.

FOOTNOTES

¹ For a summary of the remote notarization provisions enacted in Connecticut, Maine, New Hampshire, Rhode Island, and Vermont in response to COVID-19, please see our April 10, 2020 alert, *COVID-19: New England States Embrace Remote Notarization as Connecticut, Maine, New Hampshire, Rhode Island, and Vermont Temporarily Eliminate "In-Person" Requirements*.

² Massachusetts notaries are permitted to conduct remote notarizations until three days after the termination of the State of Emergency, which, as of the date of this publication, does not have a specified end date.

³ The provisions discussed herein are presented as a summary of the key requirements of the Act and are not comprehensive. Anyone seeking to notarize a document remotely in Massachusetts should review the Act in detail or consult with a legal professional.

⁴ The Act references both “mortgage financing transaction[s]” and “document[s] executed in the course of closing a transaction involving mortgages or conveyance of title to real estate,” but does not specify what, if any, the distinction is between the two for the purposes of the statute.

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