

SENATE No. 2642

The Commonwealth of Massachusetts

—
In the One Hundred and Ninety-First General Court
(2019-2020)
—

SENATE, April 21, 2020.

The committee on Senate Ways and Means to whom was referred the House Bill relative to host community agreements (House, No. 4398), - reported, in part, a "Bill providing for virtual notarization to address challenges related to COVID-19." (Senate, No. 2642).

For the committee,
Michael J. Rodrigues

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**In the One Hundred and Ninety-First General Court
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An Act providing for virtual notarization to address challenges related to COVID-19.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith make certain changes in law to authorize virtual notarization, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. For the purposes of this act, the following words shall have the following
2 meanings unless the context clearly indicates otherwise:

3 “Principal”, a person who is signing a document under this act as a principal or as a
4 credible witness, as defined in section 1 of chapter 222 of the General Laws.

5 “Satisfactory evidence of identity”, shall have the same meaning as under clause (i) or
6 clause (iii) of the definition of “satisfactory evidence of identity” in section 1 of chapter 222 of
7 the General Laws.

8 SECTION 2. A notary public appointed under chapter 222 of the General Laws

9 may perform an acknowledgement, affirmation or other notarial act under said chapter
10 222 utilizing electronic video conferencing in real time as provided in this act. A principal in any
11 such notarial act may act individually or in a representative capacity.

12 SECTION 3. (a) An acknowledgment, affirmation or other notarial act utilizing
13 electronic video conferencing in accordance with this act shall be valid and effective if:
14 (i) the notary public observes each principal's execution of a document; (ii) both the notary
15 public and each principal are physically located within the commonwealth; (iii) each principal
16 provides the notary public with satisfactory evidence of identity; provided, however, that if the
17 principal is not a United States citizen, a valid passport or other government-issued identification
18 credential that evidences the principal's nationality or residence and that bears the photographic
19 image of the principal's face and signature shall constitute satisfactory evidence of identity;
20 provided further, that if the satisfactory evidence of identity is a government-issued identification
21 credential, either: (A) the principal shall visually display the principal's identification credential
22 to the notary public during the video conference and the principal shall transmit to the notary
23 public; or (B) the notary public shall obtain a copy of the front and back of the identification
24 credential, with the executed document or separately through electronic means; provided further,
25 that if the principal's identification credential is a United States or foreign passport book, a copy
26 of the front cover and page displaying the principal's photograph, name and signature shall be a
27 sufficient copy; and provided further, that a copy of any such identification credential shall be
28 retained for a period of 10 years by the notary public, who shall keep it secure and confidential in
29 accordance with state and federal law; (iv) each principal makes the acknowledgment,
30 affirmation or other act to the notary public, as appropriate; (v) a principal causes the executed
31 document to be delivered to the notary public by delivery service, courier or other means in

32 accordance with the notary public's instructions; and (vi) if the document requiring notarization
33 and executed in the course of closing a transaction involves a mortgage or other conveyance of
34 title to real estate, upon receipt of the executed document, the notary public and each principal
35 engage in a second video conference during which each principal verifies to the notary public
36 that the document received by the notary public is the same document executed during the first
37 video conference.

38 During any video conference executed under this act, each principal shall also: (i) swear
39 or affirm under the penalties of perjury that the principal is physically located within the
40 commonwealth; and (ii) make a disclosure of any person present in the room with the principal
41 and make that person viewable to the notary public.

42 (b) Upon completion of the process under subsection (a), the notary public may affix the
43 notary public's stamp and signature to the executed document, whereupon the notarial act shall
44 be completed.

45 (c) The notarial certificate attached to the executed document shall include a recital
46 indicating that the document was notarized remotely under this act. The certificate shall
47 recite the county in which the notary public was located at the time that the notarial act was
48 completed and shall recite the date that the notarial act was completed; provided, however, that
49 the failure to include any of the recitals in this subsection shall not affect the validity or
50 recordability of the document; and provided further, that with respect to a document being
51 notarized in connection with a mortgage financing transaction, the notarial certificate may recite
52 the date stated within the body of the document, even if that date precedes the date of completion
53 of the notarial act.

54 (d) The notary public shall execute an affidavit confirming under the penalties of perjury
55 that the notary public has: (i) received a copy of each principal's current identification
56 credential
57 and visually inspected the credential during the initial video conference with the
58 principal, if
59 applicable; (ii) obtained each principal's verbal assent to any recording of the video
60 conferences;
61 (iii) taken each principal's affirmations as to physical presence of the principal within the
62 commonwealth; and (iv) been informed and noted on the affidavit any person present in
63 the
64 room, including a statement of the relationship of any person in the room to the principal.
65 The
66 affidavit shall be retained for a period of 10 years by the notary public.

67 (e) With respect to any will, nomination of guardian or conservator, caregiver
68 authorization affidavit, trust, durable power of attorney, health care proxy or authorization under
69 the federal Health Insurance Portability and Accountability Act of 1996, the document shall be
70 complete when all original counterparts and the notary public's affidavit are compiled.

71 SECTION 4. A document executed, acknowledged or notarized under this act, shall be a
72 properly executed, acknowledged and notarized document for all legal purposes in the
73 commonwealth, including, but not limited to, for recording with the registry of deeds of any

74 county, for filing as a valid will and for filing or recording with any other state, local or
75 federal
76 agency, court, department or office. With respect to any such document recorded in a
77 registry of
78 deeds or filed with a registry district of the land court: (i) the affidavit required pursuant
79 to
80 subsection (d) of section 3 shall not be required to be recorded or filed; and (ii) a
81 principal's being subsequently determined to have been physically located outside of the
82 commonwealth during any video conference or a principal's having failed to accurately disclose
83 the presence or identity of others in the room during any video conference, in either case, shall
84 not constitute grounds to set aside the title to real property acquired by an arm's length third-
85 party mortgagee or purchaser for value.

86 The expiration, repeal or amendment of this act shall not affect the validity of a notarial
87 act completed while this act is in effect and performed in accordance with the terms of
88 the act.

89 SECTION 5. The signature of any witness who participates in the electronic video
90 conference and whose signature is notarized under this act shall be valid as if the witness
91 had been present to sign in person. A document signed on multiple pages or in multiple locations
92 within the commonwealth or in multiple counterparts shall be valid and effective if it is
93 otherwise in conformity with this act.

94 SECTION 6. (a) Nothing in this act shall affect any law or regulation governing,
95 authorizing or prohibiting the practice of law, including, but not limited to, the requirement that
96 the closing of a transaction involving a mortgage or other conveyance of title to real estate may
97 only be conducted by an attorney duly admitted to practice law in the commonwealth.

98 (b) Notwithstanding any provision of this act to the contrary, with respect to any
99 document requiring notarization and executed in the course of closing a transaction involving a
100 mortgage or other conveyance of title to real estate or with respect to any will, nomination of
101 guardian or conservator, caregiver authorization affidavit, trust, durable power of attorney, health
102 care proxy or authorization under the federal Health Insurance Portability and Accountability Act
103 of 1996: (i) only a notary public appointed pursuant to chapter 222 of the General Laws

104 who is an attorney licensed to practice law in the commonwealth, or a paralegal under the
105 direct supervision of such an attorney, shall perform an acknowledgement, affirmation or other
106 notarial act utilizing electronic video conferencing in real time as provided in this act; and

107 (ii) if the notary public is a paralegal, any copy of a principal's identification credential
108 required to be retained pursuant to subsection (a) of section 3 and the affidavit required pursuant
109 to subsection (d) of said section 3 shall be retained by the notary public's supervising attorney.

110 (c) Notwithstanding any provision of this act to the contrary, with respect to a document
111 executed in the course of closing a transaction involving a mortgage or other conveyance of title
112 to real estate, if a principal proves their identity by government-issued identification credential in
113 accordance with subsection (a) of section 3 and the principal is not otherwise personally known
114 to the notary public, the principal shall display a secondary form of identification containing the
115 principal's name to the notary public during the initial video conference. The secondary form of

116 identification shall contain the principal's photograph or signature or be issued by a government
117 entity. Acceptable secondary forms of identification shall include, but not be limited to, a credit
118 or debit card, a social security card, a municipal tax bill or utility bill; provided, however, that
119 any such municipal tax or utility bill is dated within 60 days of the first video conference.

120 SECTION 7. Sections 1 to 6, inclusive, are hereby repealed.

121 SECTION 8. Section 7 shall take effect 3 business days after termination of the
122 governor's March 10, 2020 declaration of a state of emergency.