U.S. Insight: Update on Virtual Notarization (Executive Order 202.7) During the COVID-19 (Coronavirus) Pandemic (Updated: October 4, 2020)

In response to the COVID-19 (novel coronavirus) pandemic, New York State Governor Andrew Cuomo signed Executive Order 202.7 (the "Order") on March 19, 2020, authorizing notaries public to notarize documents remotely. The Order is currently in effect until April 18, 2020.

In authorizing virtual notarization, New York joins other states currently authorizing some form of remote online notarization on a temporary or indefinite basis as a result of the coronavirus pandemic. On March 25 and March 31, 2020, the New York Department of State issued guidelines which further clarified the requirements for New York's virtual notarization process. Note that these guidelines are only applicable for notarization procedures within New York state, and that notaries public or signatories seeking notarization of documents in other states should consult local counsel for appropriate guidance.

Pursuant to these guidelines, to remotely notarize a document over video conferencing technology, the Notary and signatory must fulfill the following conditions:

1. The person seeking the Notary's services, if not personally known to the Notary, must present the Notary with a valid photo ID during the video conference itself (not before or after the video conference);

2. The video conference must be live and allow for direct interaction between the person and the Notary (pre-recorded videos of signings are not acceptable);

3. The person must affirmatively represent that he or she is physically situated in the State of New York;

4. The person must transmit, on the same date the document was signed, a legible copy of the signed document directly to the Notary via fax or electronic means (e-mail transmission through .PDF, .JPEG, .TIFF or other formats is acceptable as long as the document is legible);

5. The Notary may notarize the transmitted copy of the document and transmit the same back to the person; and

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 thirty days after the date of execution.

The State of New York has also clarified in its additional guidelines that:

1. If the Notary and signatory are in different counties, the Notary should indicate on the document the county where each person is located;

2. The Notary must print and sign the document in ink, and may not use an electronic signature to officiate the document;

3. The signatory may use an electronic signature, provided the document can be signed under the Electronic Signatures and Records Act (Article 3 of the State Technology Law). If the signer uses an electronic signature, the Notary must witness the electronic signature being applied to the document, as required under the Order;

4. The Executive Order does not authorize other officials to administer oaths or take acknowledgments, and only applies to notary publics commissioned by the Secretary of State of New York's office; and

5. Following remote notarization, if the Notary receives the original document within 30 days, the notary may notarize the document again (by physically affixing a notary stamp and hand-signing the document) using the original remote notary date.

Under New York state regulations, notaries are still obligated to provide their expiration date and county where the Notary is commissioned on the document itself. Per the state's guidelines, best practices for notaries include maintaining notary log entries of each remote authorization and indicating on the document that the document was remotely notarized pursuant to the Order, though failing to comply with these recommendations will not invalidate the act of notarization or be cause for disciplinary action against the Notary.

UPDATE: On April 7, 2020, Governor Cuomo signed Executive Order 202.14 extending virtual notarization until May 7, 2020, on May 7, 2020, he signed executive order 202.28 extending virtual notarization until June 6, 2020, on June 6, 2020, he signed Executive Order 202.38 further extending virtual notarization until July 6, 2020, on July 6, 2020, he signed Executive Order 202.48 further extending virtual notarization until August 5, 2020, on August 5, 2020, he signed Executive Order 202.55 further extending virtual notarization until September 4, 2020, on September 4, 2020, he signed Executive Order 202.60 further extending virtual notarization until October 4, 2020, and on October 4, 2020, he signed Executive Order 202.67 further extending virtual notarization until November 3, 2020.

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