

MA Passes Remote Notarization & Witnessing Bill in the COVID-19 and Social Distancing Era

April 28, 2020

As the global pandemic surges, many U.S. governors have issued stay-at-home or social distancing orders that make the execution of wills, deeds, and other important documents very difficult or practically impossible.

On April 27, Massachusetts became the latest state to enable remote notarization and witnessing, passing a bill that permits a notary public to notarize legal documents during the COVID-19 State of Emergency with the aid of real-time video-conferencing technology. The required procedures differ slightly depending on the type of document being executed. Of particular importance are estate planning documents and real estate documents, which may be remotely executed under the bill as follows:

1. Estate planning documents, such as a will, nomination of guardian or conservator, or caregiver authorization affidavit, may be notarized only by a Massachusetts attorney or a paralegal under the supervision of a Massachusetts attorney. On the video conference, the signer and any required witnesses must show the notary public evidence of identity and may then execute the documents with "wet signatures" (not electronically). The signer and witnesses must then send their original executed documents and a copy of their identification to the notary public. Upon receipt of the executed originals and the copies of identification, the notary public may affix his or her seal and signature to the documents and must execute an affidavit confirming that all requirements have been met.
2. Real estate documents executed in the course of a closing transaction involving a mortgage or other conveyance of title are subject to the same procedures as estate planning documents, but upon receipt of the executed originals, the notary public must also have a second video conference with the signer and any required witnesses in which the signer and witnesses verify that the document received by the notary is the same document that was executed during the first video conference.

Regardless of the type of document being executed remotely, all parties must be physically located in Massachusetts during all video conferences. All remote sessions must be recorded, and the notary public must retain the recording, the affidavit executed by the notary and a copy of all evidence of identity for ten years.

Designated an emergency law, the bill is effective immediately and will expire three business days after the termination of the governor's March 10, 2020, declaration of a state of emergency.

We will keep you updated on this development and others, publishing important news in the [COVID-19 resource section of our website](#).

Please do not hesitate to contact your Goulston & Storrs attorney with any questions or concerns.