

New York Remote Notarization

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PRACTICES Commercial Real Estate Leasing, Finance, Real Estate

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In light of the social distancing orders put in place in response to the COVID-19 pandemic, Governor Andrew Cuomo signed [Executive Order 202.7](#) on March 19, 2020 which authorized notary publics to notarize documents remotely. The initial order was in effect through April 18, 2020; however, [Executive Order 202.18](#) and [Executive Order 202.28](#) extended the April 18, 2020 date through June 6, 2020 and it is anticipated that this date will be further extended by Executive Order so long as work in place restrictions remain in effect. A bill introduced in the New York State Senate back on March 8, 2019, Senate Bill S4352B would permanently authorize electronic and remote notarization, however this bill is still pending in the Senate Finance Committee. In the meantime, until passage of Senate Bill S4352B, notary publics may notarize documents remotely under Executive Order 202.7 by witnessing a document being signed using audio-video technology under the following guidelines:

1. The person seeking the notary's services, if not personally known to the notary, must present a valid photo ID to the notary during the video conference, not merely transmit it prior to or after;
2. The video conference must allow for direct interaction between the person and the notary (e.g. no pre-recorded videos of the person signing);
3. The person must affirmatively represent that he or she is physically situated in the State of New York;
4. The person must transmit by fax or electronic means a legible copy of the signed document directly to the notary on the same date it was signed;
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; however, the notary's receipt of the original document is not required and is only required if the notary needs to notarize the original document.

[Official guidance on Executive Order 202.7](#) issued by the New York Department of State on March 31, 2020 stated, among other things, that although the signatory may use an electronic signature in certain circumstances (if permitted under the New York Electronic Signatures and Record's Act) the notary must still print and notarize the document in wet ink. If the signatory signs electronically, the notary must witness the electronic signature being applied to the document. Additionally, if the notary and signatory are in different counties, the document must state the county where each

person is located. Although not required, the guidance suggests it is good practice for the notary to indicate on the document that the notarization was made pursuant to Executive Order 202.7.

Recordable documents related to real estate transactions, such as mortgages and deeds, need to be notarized and a title company needs to record and insure the documents. Many counties in New York State (including the New York county) allow for electronic recording, which permits a copy of a duly signed and notarized document to be recorded. However, title companies will not record or insure the document unless an employee from the title company has a fully executed original of the document. This requirement is because the title company makes a representation to the local recording office that the title company has a wet ink original of the document prior to submission for electronic recordation. Because of the Executive Order, most title companies will permit the original document to come in separate counterparts from the signatory and notary, which will be compiled by the title company (though as noted above, Executive Order 202.7 does provide a mechanism for sending a wet ink original to the notary to be re-notarized after signing). Thus, even though the Executive Order permits the signatory to sign electronically, the person must still sign a wet ink original for recordable documents. Additionally, some title companies are requiring that the remote notarization process be video recorded and saved as part of their underwriting process. In counties without electronic recording, the same process would apply, except that the title company would submit the original notarized document to the county, either by mail or drop-off.

In some counties with electronic recording, including Suffolk and Westchester counties, the recording office will not accept a document for recording that was electronically notarized unless the document is also accompanied by a certificate of conformity, which is a document (that is also notarized) which attests that the notarization conforms with the Executive Order.

These requirements and recommendations are constantly in flux and vary by title company and county. A recorded document that is not properly executed and notarized will not provide proper notice and could create title and enforceability issues in real estate transactions. Therefore, it is recommended to confirm the current requirements of all applicable executive orders, state legislature and state guidance and to consult with the transaction title company well in advance of any closing as to its specific requirements with respect to remote notarization.

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