Remote Notarization - Authorization

• On 2/24/22 remote notarization signed, making changes to legislation adopted late December 2021
• Allows remote notarization effective immediately – creates Executive Law § 135-c
• DOS adopting rules and regulations

Remote Notarization - Implementation

Where in the world is the notary, the principal, and Carmen Sandiego?

• Notary – must be physically in NYS
• Principal can be
  – In NYS
  – In U.S. but not in NYS OR outside the US so long as:
    • The notarized record must be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to U.S. jurisdiction OR
    • The record involves property located in the U.S. or involves a transaction substantially connected with the U.S.

Remote Notarization - Procedure

• Notary must be able to see and interact, in real time, with principal through audio-visual communication technology
• Technology must have security protocols to prevent unauthorized access
• Notary must make and keep audiovisual recording of the remote notarization AND a backup for 10 years (can hire third party to do this)

Q. How does the notary identify the principal?
A. 1 of 3 ways
  1. Personally know the person
2. Principal appears remotely by means of communication technology that facilitates the following: (AKA there are special programs the town can buy)
   (i) Remote presentation by the principal of a credential (aka gov ID)
   (ii) Credential analysis (a third-party vendor that can validate a government-issued ID; and
   (iii) Identity proofing of the principal (a process or service through which a third party confirms the identity of a signor through review of personal information from public and proprietary data sources)

3. The Credible Witness – Basically, a third person that personally knows the principal vouches for the identity of the principal by submitting an oath or affirmation
   – Notary can know the credible witness personally or
   – Third person can be identified in the same manner as the principal using communications technology

   • After principal signs document (either with ink or electronic signature) in notary’s presence, it must be transmitted to notary
   • Transmit means by mail, fax, or electronic means
   • Confirm that document is the same as one signed remotely in the notary public’s presence before applying notary stamp and signature (can be ink or electronic)
   • Statement must be added to jurat “This remote notarial act involved the use of communication technology.”

Remote Notarization – Electronic Signature

• A notary’s electronic signature must be:
  i. unique to notary;
  ii. able to be independently verified;
  iii. retained under notary’s sole control;
  iv. attached or logically associated with electronic record; and
  v. linked to the data in such a manner that any subsequent alterations to underlying electronic record are detectable and may invalidate the notarial act

Remote Notarization – Journal Entries

• Notary must keep journal of all remote notarizations performed
• Must be made contemporaneously “with the performance of the notarial act”
• Entry must include:
  – the date and approximate time of notarization,
  – name of the remote signor,
  – audio-visual technology used to perform the notarization
  – number and type of documents officiated and notarial services provided
- type of identification/credential presented by the remote signor of the
document or documents.

• The journal must be kept by notary for as long as they remain a notary and for an
additional five years after that.

Remote Notarization – Records Retention
A recording of the remote notarization must be retained by the notary for at least 10
years. Notaries must take reasonable steps to ensure the recording is both backed up
and secure.

How much can a notary charge for remote notarization?
$5.00 per act/signature. Fee cannot exceed $2.00 for non-remote notarizations.

Does notary have to provide remote notary services?
No.

Does a remote notary have to register with the Department of State?
Yes, notaries performing remote notarizations are required to register with the state on
January 31, 2023 and thereafter.