



April 28, 2020

Emergency Legislation Authorizes Use of Remote Notaries in Massachusetts

On April 27, 2020, Governor Baker signed into law emergency legislation permitting virtual notarization of documents during the COVID-19 pandemic. Prior to the new law, notaries and witnesses had to be in the physical presence of the person signing a document but now they may use online video conference services in order to maintain social distancing. In order to be valid the following requirements must be met:

- Only a Massachusetts licensed attorney or paralegal directly supervised by a Massachusetts licensed attorney may notarize real estate and estate planning documents. For all other types of documents, any Massachusetts notary will suffice.
- The notary public, principal, and witnesses (if necessary) must all be located in Massachusetts when the documents are executed.
- The notary public must be able to observe the principal (and any required witnesses) executing the documents via real-time electronic video conference, and the conference must be recorded.
- If the principal is not personally known by the notary public, the principal must display their government-issued identification during the video conference and send a copy of the identification to the notary public.
- For real estate documents only, the principal must present a second form of identification, and a second video conference is required once the notary public receives the documents signed by the principal.
- The notary public must sign an affidavit confirming that all steps required by the statute were followed.
- The notary affidavit, copy of principal's government identification, and video recording of the conference must be retained by the notary public for 10 years.

This law is meant as an emergency stopgap and will expire after the state of emergency has been lifted. Documents signed now in accordance with the law will continue to be valid even after the state of emergency has been lifted so there will be no need to re-sign. However, the law does not apply retroactively, so documents signed remotely prior to April 27, 2020, should be signed again following the process set forth in the new law. Finally, the new law does not prohibit signing documents in the physical presence of a notary and witnesses during the state of emergency, although doing so safely remains a challenge.





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