



THE TRIAL COURT OF MASSACHUSETTS
LAND COURT

Three Pemberton Square
Boston, MA 02108
TEL: (617) 788-7470

Christina T. Geaney
Chief Title Examiner

Title Examination Department
Landcourt.Title@jud.state.ma.us

MEMORANDUM of the CHIEF TITLE EXAMINER

To: All Registered Land Registry Districts
From: Christina T. Geaney, Chief Title Examiner
Date: March 31, 2023
Updated December 29, 2023

Re: Repeal of Electronic Notarization as Authorized by Section 12 of Chapter 22 of the Acts of 2022 and Enactment of "Remote Online Notarization"

References:

[*Chapter 2 of the Acts of 2023, sections 23-33, 48, 81, 84, and 85*](#)

[*Chapter 107 of the Acts of 2022, section 5*](#)

[*Chapter 22 of the Acts of 2022, sections 12, 37, 41, and 44*](#)

[*Chapter 20 of the Acts of 2021, section 7*](#)

[*Chapter 71 of the Acts of 2020*](#)

UPDATE, December 29, 2023:

The statutory provisions authorizing remote online notarization in [Chapter 2 of the Acts of 2023](#) require, prior to implementation, the adoption and promulgation by the Secretary of the Commonwealth of protocols, approvals, and regulations, G.L. c. 222, § 28. The institution of remote online notarization for registered land documents will not be possible until that process concludes. The Land Court, which has authority to adopt rules, guidelines, or directives concerning the acceptance of remotely notarized registered land documents, will defer doing so until further notice, to afford the Secretary full opportunity to adopt and issue appropriate and required protocols, approvals, and regulations. The court's goal will be to achieve as much consistency as possible between the acceptance of registered land documents employing remote online notarization and the acceptance of instruments employing remote online notarization which affect title to recorded land. Accordingly, no registry district should accept for registration any documents notarized remotely until further instruction from the court issues. Any questions concerning this Memorandum may be directed to the Land Court Chief Title Examiner or her designee.

I. Repeal of “Virtual” Electronic Notarization

Effective March 31, 2023, section 12 of Chapter 22 of the Acts of 2022 – which had authorized temporarily the use of “virtual” electronic notarization in accordance with the specific requirements set forth in that Act – is repealed.¹

Accordingly, the Land Court’s Land Registration Districts may not accept for registration documents that have been virtually notarized on or after March 31, 2023. For any document requiring acknowledgement, the taking of an oath, or other notarial act, if that notarial act took place on or after March 31, 2023, the notarial act must have been performed in the physical presence of the notary public.

For any documents notarized pursuant to Chapter 22 of the Acts of 2022 or Chapter 71 of the Acts of 2020, prior to March 31, 2023, and during the respective effective dates of those Acts, please refer to the two prior Chief Title Examiner Memoranda attached at the end of this Memorandum to verify that the document presented for registration complies with the requirements of those Acts.

II. Enactment of “Remote Online Notarization”

The legislature has enacted, and the Governor has signed into law, Chapter 2 of the Acts of 2023 (available at: [Chap. 2 of the Acts of 2023 - Supp Budget \(mass.gov\)](#)). Sections 23 through 33 of this Act make extensive changes to notarial law in Massachusetts. Included in this new legislation are provisions allowing remote online notarization in accordance with the requirements set forth therein. The substantive provisions of this law authorizing remote online notarization are significantly different than those in the now-repealed Acts authorizing virtual electronic notarization and generally become effective on January 1, 2024, subject to the implementation of regulations by the Secretary of the Commonwealth, and to the issuance of any rules, guidelines, or directives by the Land Court as to registered land.

The Land Court will provide further guidance about accepting registered land documents notarized under the new remote online procedures after the Secretary of the Commonwealth establishes the new protocols, approvals, rules and regulations.

Attachments:

- Memorandum of the Chief Title Examiner Re: Electronic Notarization as Authorized by Section 12 of Chapter 22 of the Acts of 2022 (issued Mar. 4, 2022, last updated Jul. 22, 2022)

¹ See sections 41 and 44 of Chapter 22 of the Acts of 2022 as amended by section 5 of Chapter 107 of the Acts of 2022 (replacing original sunset date of July 15, 2022).

- Memorandum of the Chief Title Examiner Re: Chapter 71 of the Acts of 2020: An Act Providing for Virtual Notarization to Address Challenges Related to COVID-19 (the “Act”)

ATTACHMENTS



THE TRIAL COURT OF MASSACHUSETTS
LAND COURT

Three Pemberton Square
Boston, MA 02108
TEL: (617) 788-7470

Christina T. Geaney
Chief Title Examiner

Title Examination Department
Landcourt.Title@jud.state.ma.us

MEMORANDUM of the CHIEF TITLE EXAMINER

To: All Registered Land Registry Districts
From: Christina T. Geaney, Chief Title Examiner
Date: March 4, 2022

Updated May 12, 2022 (regarding retroactivity and sunset)
Updated July 22, 2022 (regarding extension of sunset)

Re: Electronic Notarization as Authorized by Section 12 of Chapter 22 of the Acts of 2022

This Memorandum was revised on July 22, 2022, due to the extension of the expiration date of the Act to March 31, 2023, by section 5 of Chapter 107 of the Acts of 2022, signed into law on July 16, 2022.

Prior reference: This Memorandum references and supplements the Chief Title Examiner Memorandum issued on May 13, 2020, entitled "Chapter 71 of the Acts of 2020: An Act Providing for Virtual Notarization to Address Challenges Related to COVID-19 (the "Act")," which provides guidance on the implementation of the Act's temporary authorization of electronic notarization. The Act was extended through December 15, 2021, by Section 7 of Chapter 20 of the Acts of 2021.

The May 13, 2020 Memorandum remains in effect and provides guidance for the acceptance for registration of documents that were notarized in accordance with the procedures set forth in that Act during its effective dates of April 23, 2020 to December 15, 2021.

The legislature has enacted, and the Governor has signed into law, Chapter 22 of the Acts of 2022 (available at: <https://malegislature.gov/Laws/SessionLaws/Acts/2022/Chapter22>), effective February 12, 2022. Section 12 of this Act authorizes the use of "virtual" or electronic notarization in accordance with the specific requirements set forth therein, "[i]n order to address the disruptions caused by the outbreak of the 2019 novel coronavirus, also known as COVID-19, and subsequent variants."

Section 12 takes effect retroactively as of December 15, 2021, and any notarial acts that occurred virtually in accordance with the requirements of Chapter 71 of the Acts of 2020

prior to the effective date of this Act are deemed valid. Section 12 of Chapter 22 of the Acts of 2022 will sunset on March 31, 2023, in accordance with section 5 of Chapter 107 of the Acts of 2022 (replacing original sunset date of July 15, 2022).

In accordance with this law, the Land Court's Registered Land Registry Districts may accept for registration otherwise acceptable documents which have been executed and acknowledged in full conformity with this session law, during the time it is in effect. As provided for in Section 12, subsection (c)(1)(ii), full conformity includes, but is not limited to, the requirement that both the notary public and each principal (signatories to the document) physically are located within the Commonwealth of Massachusetts.

Please confirm that any document submitted for registration has attached a notarial certificate which includes the recitals specified in this session law (see Section 12, subsection (c)(3)). Please also note that, while subsection (c)(4) requires the notary public to execute an affidavit under the penalties of perjury, the Act also provides in subsection (d), para. two, that the affidavit "shall not be required to be recorded or filed."

Finally, please be aware that the Act provides, in Section 12, subsection (f)(1)(i) that, "with respect to any document requiring notarization and executed in the course of closing a transaction involving a mortgage or other conveyance of title to real estate...only a notary public... who is an attorney licensed to practice law in the commonwealth or a paralegal under direct supervision of such an attorney, shall perform an acknowledgement, affirmation or other notarial act utilizing electronic video conferencing in real time as provided in this section."

Any questions concerning the suitability of any document presented for registration that is executed and acknowledged pursuant to this Act should be directed to the Chief Title Examiner or her designee prior to registration.

To: All Registered Land Registry Districts

From: Christina T. Geaney, Chief Title Examiner

Date: May 13, 2020

Re: **Chapter 71 of the Acts of 2020: An Act Providing for Virtual Notarization to Address Challenges Related to COVID-19 (the “Act”)**

The legislature has enacted Chapter 71 of the Acts of 2020, “An Act Providing for Virtual Notarization to Address Challenges Related to COVID-19,” the text of which is reproduced below and is available on online at:

<https://malegislature.gov/Laws/SessionLaws/Acts/2020/Chapter71>.

This temporary emergency act, which authorizes virtual notarization in accordance with the specific requirements the legislation sets forth, is effective as of the date it was approved, April 23, 2020 and is set to be repealed three business days after termination of the governor’s March 10, 2020 declaration of a state of emergency.

The court’s Land Registration Districts may accept for registration otherwise acceptable documents which have been executed and acknowledged in full conformity with this emergency legislation, during the time it is in effect.

As provided for in the emergency law, full conformity with the Act’s provisions includes, but is not limited to, the requirement that both the notary public and each principal (signatories to the document) physically are located within the Commonwealth of Massachusetts.

Please confirm that the document has attached a notarial certificate which includes the recitals specified in the emergency law (see section 3 (c)). Please also note that, while this legislation in section 3 (d) requires the notary public to execute an affidavit, the Act also provides in section 4, 2d para., that affidavit “shall not be required to be recorded or filed...”

Finally, please be aware that the Act provides, in Section 6 (a)(i) that, “with respect to any document executed in the course of closing a transaction involving a mortgage or other conveyance of title to real estate...” “only a notary public... who is an attorney licensed to practice law in the commonwealth or a paralegal under direct supervision of such an attorney, shall perform an acknowledgement, affirmation or other notarial act utilizing electronic video conferencing in real time as provided in...” the Act.

Any questions concerning the suitability of any document presented for registration which are executed and acknowledged pursuant to this Act should be directed to the Chief Title Examiner prior to registration.

AN ACT PROVIDING FOR VIRTUAL NOTARIZATION TO ADDRESS CHALLENGES RELATED TO COVID-19.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith make certain changes in law to authorize virtual notarization, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. As used in this act, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Principal”, a person who is signing a document under this act as a principal or as a credible witness, as those terms are defined in [section 1 of chapter 222 of the General Laws](#).

“Satisfactory evidence of identity”, (i) identification of an individual based on at least 1 current document issued by a federal or state government agency bearing the photographic image of the individual’s face and signature; or (ii) identification of an individual based on the notary public’s personal knowledge of the identity of the principal.

SECTION 2. In order to address the disruptions caused by the outbreak of the 2019 novel coronavirus, also known as COVID-19, or the effects of the governor’s March 10, 2020 declaration of a state of emergency, a notary public appointed pursuant to chapter 222 of the General Laws may perform an acknowledgement, affirmation or other notarial act under said chapter 222 utilizing electronic video conferencing in real time as provided in this act. A principal in any such notarial act may act individually or in a representative capacity.

SECTION 3. (a) An acknowledgement, affirmation or other notarial act utilizing electronic video conferencing pursuant to this act shall be valid and effective if:

- (i) the notary public observes each principal’s execution of a document;
- (ii) both the notary public and each principal are physically located within the commonwealth;
- (iii) each principal provides the notary public with satisfactory evidence of identity; provided, that if the principal is not a United States citizen, a valid passport or other government-issued identification credential that evidences the principal’s nationality or residence and that bears the photographic image of the principal’s face and signature shall constitute satisfactory evidence of identity; provided further, that if the satisfactory evidence of identity is a government-issued identification credential, the principal shall both visually display the principal’s identification credential to the notary public during the electronic video conference and shall transmit to the notary public a copy of the front and back of the identification credential, either with the executed document or separately through electronic means; provided further, that if the principal’s identification credential is a United States or foreign passport book, a copy of the front cover and page displaying the principal’s photograph, name and signature shall be a sufficient copy; and provided further, that a copy of any such identification credential shall be retained for a period of 10 years by the notary public, who shall keep it secure and confidential in accordance with state and federal law;
- (iv) each principal makes the acknowledgement, affirmation or other act to the notary public, as appropriate;
- (v) a principal causes the executed document to be delivered to the notary public by delivery service, courier or other means in accordance with the notary public’s instructions; and

(vi) with respect to any document requiring notarization and executed in the course of closing a transaction involving a mortgage or other conveyance of title to real estate, upon receipt of the executed document, the notary public and each principal engage in a second video conference during which each principal verifies to the notary public that the document received by the notary public is the same document executed during the first video conference.

During any video conference pursuant to this act, each principal shall: (i) swear or affirm under the penalties of perjury that the principal is physically located within the commonwealth; and (ii) make a disclosure of any person present in the room with the principal and make that person viewable to the notary public.

(b) Upon completion of the process under subsection (a), the notary public may affix the notary public's stamp and signature to the executed document, whereupon the notarial act shall be completed.

(c) The notarial certificate attached to the executed document shall include a recital indicating that the document was notarized remotely pursuant to this act. The certificate shall recite the county in which the notary public was located at the time that the notarial act was completed and shall recite the date that the notarial act was completed; provided, however, that the failure to include any of the recitals required by this subsection shall not affect the validity or recordability of the document; and provided further, with respect to a document being notarized in connection with a mortgage financing transaction, the notarial certificate may recite the date stated within the body of the document, even if that date precedes the date of completion of the notarial act.

(d) The notary public shall execute an affidavit confirming under the penalties of perjury that the notary public has: (i) received a copy of each principal's current identification credential and visually inspected the credential during the initial video conference with the principal, if applicable; (ii) obtained each principal's verbal assent to the recording of the electronic video conference; (iii) taken each principal's affirmations as to physical presence of the principal within the commonwealth; and (iv) been informed and noted on the affidavit any person present in the room, including a statement of the relationship of any person in the room to the principal. The affidavit shall be retained for a period of 10 years by the notary public.

(e) With respect to any will, nomination of guardian or conservator, caregiver authorization affidavit, trust, durable power of attorney, health care proxy or authorization under the federal Health Insurance Portability and Accountability Act of 1996, the document shall be complete when all original counterparts and the notary public's affidavit are compiled.

(f) Each notary public who performs a notarial act utilizing electronic video conferencing pursuant to this act shall create an audio and video recording of the performance of the notarial act; provided that, the audio and video recording shall be retained for a period of 10 years by the notary public.

SECTION 4. A document executed, acknowledged or notarized pursuant to this act shall be a properly executed, acknowledged and notarized document for all legal purposes in the commonwealth, including, but not limited to, for recording with the registry of deeds of any county, for filing as a valid will and for filing or recording with any other state, local or federal agency, court, department or office.

With respect to any such document recorded in a registry of deeds or filed with a registry district of the land court: (i) the affidavit required pursuant to subsection (d) of section 3 shall not be required to be recorded or filed; and (ii) a principal's being subsequently determined to have been physically located outside of the commonwealth during any video conference or a principal's having failed to accurately disclose the presence or identity of others in the room during any video conference, in either case, shall not constitute grounds to set aside the title to real property acquired by an arm's length third-party mortgagee or purchaser for value.

The expiration, repeal or amendment of this act shall not affect the validity of a notarial act completed while this act is in effect and performed in accordance with the terms of this act.

SECTION 5. The signature of any witness who participates in the electronic video conference and whose signature is notarized pursuant to this act shall be valid as if the witness had been present to sign in person. A document signed on multiple pages or in multiple locations within the commonwealth or in multiple counterparts shall be valid and effective if it is otherwise in conformity with this act.

SECTION 6. (a) Notwithstanding any provision of this act to the contrary, with respect to any document requiring notarization and executed in the course of closing a transaction involving a mortgage or other conveyance of title to real estate or with respect to any will, nomination of guardian or conservator, caregiver authorization affidavit, trust, durable power of attorney, health care proxy or authorization under the federal Health Insurance Portability and Accountability Act of 1996:

(i) only a notary public appointed pursuant to chapter 222 of the General Laws who is an attorney licensed to practice law in the commonwealth or a paralegal under the direct supervision of such an attorney, shall perform an acknowledgment, affirmation or other notarial act utilizing electronic video conferencing in real time as provided in this act; and

(ii) if the notary public is a paralegal, any copy of a principal's identification credential required to be retained pursuant to subsection (a) of section 3, audio and video recording required to be retained pursuant to subsection (f) of said section 3 and the affidavit required pursuant to subsection (d) of said section 3, shall be retained by the notary public's supervising attorney.

(b) Notwithstanding any provision of this act to the contrary, with respect to any document requiring notarization and executed in the course of closing a transaction involving a mortgage or other conveyance of title to real estate, if the principal proves their identity by a government-issued identification credential in accordance with said subsection (a) of said section 3 and the principal is not otherwise personally known to the notary public, the principal shall display a secondary form of identification containing the principal's name to the notary public during the initial video conference, which may contain the principal's photograph, signature or be issued by a government entity. Acceptable secondary forms of identification shall include, but not be limited to, a credit or debit card, a social security card, a municipal tax bill or a utility bill; provided, however, any such municipal tax or utility bill is dated within 60 days of the first video conference.

(c) Nothing in this act shall affect any law or regulation governing, authorizing or prohibiting the practice of law, including, but not limited to, the requirement that the closing of a transaction involving a mortgage or other conveyance of title to real estate may only be conducted by an attorney duly admitted to practice law in the commonwealth.

SECTION 7. Sections 1 to 6, inclusive, are hereby repealed.

SECTION 8. Section 7 shall take effect 3 business days after termination of the governor's March 10, 2020 declaration of a state of emergency.

Approved, April 23, 2020.