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**TO: North Carolina Chicago Title Approved Attorneys**

**FROM: Chicago Title, North Carolina State Office**

**DATE: May 6, 2020**

**RE: COVID-19, “Remote” Video Notarization in North Carolina**

**Under Temporary Legislation**

In response to the COVID-19 Emergency, the NC General Assembly enacted [Session Law 2020-3](https://www.ncleg.gov/BillLookUp/2019/s704), <https://www.ncleg.gov/BillLookUp/2019/s704> (the Temporary Legislation), which includes temporary authority for notary services by North Carolina notaries with minimum in-person contact.

Under the Temporary Legislation, a North Carolina notary can satisfy the requirement for a signer located in North Carolina to “personally appear” before the notary by using video conference technology. The Temporary Legislation goes into effect immediately and expires at 12:01 am on August 1, 2020. Important information and forms are available on the special website of the NC Secretary of State: <https://www.sosnc.gov/divisions/notary/emergency_video_notarization>

Chicago Title Insurance Company will insure most transactions using documents notarized in compliance with the Temporary Legislation. We offer the following overview and practice considerations to assist our approved attorneys and their staff in notarizing and in reviewing notary acknowledgments of documents that will be relevant to real-estate transactions for title insurance underwriting.

**Overview of the North Carolina Temporary Legislation**:

For a traditional “wet-inked” signature and notarization, the below structure applies.

1. Witnessing signatures: The notary must be able to see the individual actually sign the documents, and hear the individual say which documents are being signed. The notary’s ability to see and hear via video technology satisfies the requirement for personal appearance of the individual before the notary.
2. Location: The notary *and* the signer much be located within the state of North Carolina. When the notary takes the acknowledgment of the signer, the signer must verify that they are physically located within the state of North Carolina and indicate the county where they are physically located.
3. Same-Day Verification: After the notary takes the acknowledgement of the signer, the notary must receive a copy of the signed documents via fax, or photo or scanned image transmitted via text or email. The notary must then compare the transmitted image with the original wet-ink signatures when the wet-ink signatures are received by the notary.
4. Acknowledging Signatures: Though the notarial certificate (acknowledgment or jurat) will be in the traditional form, dated the date of the video conference when the signer acknowledged or swore/affirmed before the notary, the written acknowledgement form on the signed document must include:
   1. the North Carolina county in which the signer is located at the time of the notarial act,
   2. the county in which the North Carolina notary is located at the time of the notarial act, and
   3. the statement:

I signed this notarial certificate on \_\_\_\_\_ (date on which notary is completing the notarial certificate) according to the emergency video notarization requirements contained in G.S. 10B-25.

1. Recordation: The Temporary Legislation does not change requirements for recording with a Register of Deeds. In most cases (other than end-to-end digital documents, see NOTE below), the recorder must have the original wet-signed, video-notarized document for recording. The signer will have to sign before and acknowledge to the notary using video technology, then have the wet-signed document delivered to the notary so that the notary can affix their notarization and date the notarial act as of the date the video notarization took place via video technology.

NOTE RE *ELECTRONIC* SIGNING AND NOTARIZATION: The exception to wet-ink documents is and end-to-end digital document -- e-signed, e-notarized, and delivered through secure tamper-proof digital portals through to e-recording with the register of deeds who will accept same. This must be accomplished by an NC notary who is validly commissioned as an *electronic* notary and may combine the video notarization provisions of the Temporary Legislation with an electronic notarization that qualifies under *both* the existing Electronic Notary Act, NCGS Chapter 10B, Article 2, and the existing Uniform Real Property Electronic Recording Act, NCGS 47, Chapter 1A.)

1. Notary Journal: The notary is required to keep a journal entry for each emergency video notarization performed. The journal must include the following information:
2. The time of day when the notary observed the signing of the document by each principal and was presented with the principal's acceptable form of identification
3. The date of the completion of the emergency video notarization notarial certificate
4. The last and first name of each principal.
5. The type of notarial act performed.
6. The type of document notarized or proceeding performed.
7. The type of acceptable form of identification presented including, if applicable, the issuing agency and identification number on the identification presented.
8. The type of video conference technology used during the emergency video notarization.
9. A statement that the notary and each principal could see and hear each other.
10. Whether any other person was present with the principal at the time of signature and if so, the name of that person

PRACTICAL HINT: Electronic notaries using the providers approved by the Secretary of State as required for their commissions may be able to use their electronic notarial journals for wet-ink notarization as well, since journals are highly recommended in normal times, and are now *mandatory* under this temporary legislation.

1. Video Conference Technology: For purposes of the Temporary Legislation, video conference technology is electronic communication which must:
2. Occur in real time
3. Allow direct simultaneous interaction between the notary and the signer, via both sight and sound
4. Utilize audio with sufficient volume clarity to be heard and understood by all participants
5. Provide clear view of the face of each signer and their identification in order for the notary to determine whether the identification is sufficient evidence of the signer’s identity
6. Be live, not pre-recorded
7. The video communication may be recorded by:

* The technology’s recording and storage service
* Another video recording device
* Clear electronic screen shots of the signer’s face, the signer’s identification and the document to be notarized

We encourage you to refer to the full text of the North Carolina [Temporary Legislation](https://ncleg.gov/EnactedLegislation/SessionLaws/HTML/2019-2020/SL2020-3.html) and the North Carolina Secretary of State’s guidance at [guidance at their website](https://www.sosnc.gov/imaging/dime/webportal/55573846.pdf) for more specific information.

**Additional Practice, Professional Responsibility and Regulatory Considerations:**

In addition to the specific requirements of the Temporary Legislation, we recommend that anyone planning to notarize documents under the North Carolina Temporary Legislation consider the following points:

* Terminology can be confusing. The procedure authorized by the Temporary Legislation is not remote online notarization (RON) as that term has been used for some time in states, such as Virginia, which have enacted legislation authorizing RON. However, to the extent that the entire document execution, notarization, and delivery through to ultimate recipient, including through e-recording with the register of deeds, is *totally electronic* in compliance with the NC Electronic Notary Act, as noted above, this temporary legislation can replace the “personal appearance” requirement only; all other requirements would still apply.
* The Temporary Legislation authorizes an accessible emergency procedure that bypasses the traditional safeguards of physical proximity between signer and notary. The features that make video notarization accessible also make it potentially less secure.
* Participants in a transaction need to consent to use of video notarization. These include:
  + The parties to the transaction itself.
  + The lender, which must permit video notarization in its closing instructions. Note that a lender’s closing instructions should reflect any Fannie Mae or Freddie Mac requirements that go beyond the requirements of the Temporary Legislation. The remote notarization requirements (as of the date of this bulletin) of these government-sponsored entities can be found at
    - Fannie Mae RIN Job Aid: <https://singlefamily.fanniemae.com/media/22666/display>
    - Fannie Mae FAQs (updated May 5, 2020): <https://singlefamily.fanniemae.com/media/22326/display>
    - Fannie Mae Lender Letter (LL-2020-03) updated May 5, 2020 (see page 6): <https://singlefamily.fanniemae.com/media/22316/display>
    - Freddie Mac FAQs (Updated May 5, 2020): <https://sf.freddiemac.com/content/_assets/resources/pdf/faq/covid-19-selling-related-frequently-asked-questions.pdf>
    - Freddie Mac Bulletin 2020-8, Selling Guidance Related to COVID-19, issued 03/31/2020: <https://guide.freddiemac.com/app/guide/bulletin/2020-8> .
    - Freddie Mac COVID-19 Selling-related FAQs ( See Notarization Q6):
    - <https://sf.freddiemac.com/faqs/covid-19-selling-faqs#title-closing-and-notarization>
  + The title insurer. As noted above, we will insure most transactions using video notarization performed in compliance with the Temporary Legislation, but, please consult an underwriter with our office or agent if your transaction:
    - Involves coverage of $1,000,000 or more,
    - Is not expected to close before May 30, 2020,
    - Involves notarization of a signer who is not a US citizen, or
    - Involves notarization in situations other than as specifically permitted by the Temporary Legislation, such as:
      * A non-NC notary
      * A signer outside NC
* The attorney should assure that the notary uses videoconferencing systems which are secure, private and protect both client confidentiality and non-public information, and that all the appropriate settings are chosen to assure that protection. While not promoting any system over another, and since providers may increase or lessen their security over time, currently our companies recognize that Microsoft Teams, WebEx and GoToMeeting may provide this level of security, while according to public press information Zoom may not yet, and FaceTime and Skype would not. The most-accessible (and cheapest) video conferencing platforms may prone to hacking and other security vulnerabilities. The State Bar cautions users to keep in mind that confidential or other non-public information could be compromised, for example when the signer holds up their driver’s license, giving not only the notary but also any video intruder a long, clear opportunity to copy and steal. *See NC State Bar “Professional Responsibility in a Pandemic,” and 2011 FEO 6, 2005 FEO 10 referenced therein.* <https://www.ncbar.gov/news-publications/news-notices/2020/04/professional-responsibility-in-a-pandemic/>
* The same considerations apply to recording of the notarization session. While the Temporary Legislation does not require recording, it requires that the session be capable of recording. If using the recording capability of the same video conferencing platform used for the notarization conference, the same security questions should be asked about the platform’s storage features.
* In addition to the identification requirements of the Temporary Legislation, the attorney and notary should assure the signer’s identity as follows:
  + The driver’s license or other government-issued identification be shown to the camera both front and back.
  + NOTE: Just because a form of identification is a government-issued photo ID does not mean that it satisfies the Temporary Legislation. The ID must include not only a photo, but also a “physical description.” It may be surprising what government IDs (e.g., passports) do not include a “physical description” along with a photo of the holder.
  + A second means of identification be required. These can include the following:
    - Notary can text a random 6-digit number (www.numbergenerator.org) to a known safe phone number; signer to repeat number back during the video conference. A safe phone number is one that has been confirmed prior to closing other than by email. Note the file with the 6-digit number and phone number texted; or
    - Notary can ask the signer a question during the video conference gleaned from personal data contained in the loan file that only the signer would know; or
    - In the context of a borrower in a refinance transaction, or a seller in a sale transaction, during the video conference, signer can display a copy of a utility bill dated within the last 30 days for the party’s known address in the name of the signer; or
    - Use of a third-party identity verification service, with evidence of same retained in the file.

**Notarizations Out of State or Out of Country**

AQuestions to be addressed include:

* Location of the notary
* Compliance with the law of the state of the location and commissioning of the notary?
* Who is providing assurance of compliance?
* Location of the signers
* Are the signers U.S. Citizens with valid identifications?
* What mechanisms are the attorney and the notary using to assure the authenticity, identification and validity of the notarization, the parties, the documents being notarized and the documents ultimately delivered for closing?

As always, any consideration of out of state notarizations should be discussed with the title insurance underwriting counsel.