



**Virtual Notarization Guidelines:
Temporary Procedures Authorized by Chapter 71 of the Acts of 2020**

The present statutory requirement that a notarial act may be completed only if both notary and principal are in each other's *physical presence at a single time and place* (MGL c. 222, § 1) is suspended in Massachusetts for the duration of the Declaration of a State of Emergency, subject to the provisions of chapter 71, which authorizes the utilization of electronic video conferencing in real time.

1. Signer: Chapter 71 applies to a person who is signing a document, a principal or as a credible witness, as those terms are defined in MGL c. 222, § 1:

- "Principal" means a person whose signature is notarized or a person taking an oath or affirmation before a notary public.

2. Identification: An ink-signed document may be acknowledged, sworn to or affirmed, by a signatory in a video-conference with the notary, during which satisfactory evidence of identity is displayed, and then the document is delivered in accordance with the notary public's instructions, to the notary for his or her signature and notary stamp in order to complete the notarial act.

- "Satisfactory evidence of identity" means (i) identification of an individual based on at least one 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.

- For an instrument that involves a *mortgage or other conveyance of title to real estate*, a secondary form of identification would be required if the principal is not otherwise personally known to the notary public.¹

3. Procedure: The notarial act shall be valid and effective if:

¹ A 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.

(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.

4. Location of Parties: Section 3 of chapter 71 also provides that a principal shall swear or affirm under the penalties of perjury that the principal is physically located within the commonwealth; and shall make a disclosure of any person present in the room with the principal and make that person viewable to the notary public. However, see Title Saving and Practice of Law Protections, *infra*

5. Video Recording: Each notary public who performs a notarial act utilizing electronic video conferencing shall create an audio and video recording of the performance of the notarial act.

6. Notary Clause/Certificate: The notarial certificate that is attached to the notarized document shall include certain recitals:

(i) that the document was notarized remotely pursuant to chapter 71 of the acts of 2020

(ii) the name of the county in which the notary public was located at the time that the notarial act was completed, and

(iii) the date that the notarial act was completed; 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.

➤ *The failure to include any of the required recitals shall not affect the validity or recordability of the document.*

7. Notary Affidavit: The notary shall execute an affidavit, which need not be recorded, 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;

(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 to the principal of any person in the room.

8. Retention of Documents & Recording: The affidavit, the required copy of a principal's identification credential, and the audio and video recording shall all be retained for a period of 10 years by the notary public; except that if the notary public is a paralegal, all of that documentation shall be retained by the notary public's supervising attorney.

9. Witnesses: The signature of any witness who participates in a video-conference and whose signature is notarized pursuant to chapter 71 shall be valid as if the witness had been present to sign in person. A document that has been 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.

10. Probate Documents: 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 notarized document shall be complete when all original counterparts and the notary public's affidavit are compiled.

11. Duration: Chapter 71 is effective until three business days after termination of the Governor's March 10, 2020 Declaration of a State of Emergency.

TITLE SAVING & PRACTICE OF LAW PROTECTIONS

- A document executed, acknowledged or notarized pursuant to Chapter 71 of the Acts of 2020 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 of chapter 71 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 failure to include in the notary certificate any of the special recitals shall not affect the validity or recordability of the document that was notarized under chapter 71.
- 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 chapter 71.
- The video-conference alternative to in-person notarization during the emergency period is available to notaries not involved in the practice of law, but 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:
 - (a)(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 chapter 71; 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 of chapter 71, 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) Nothing in chapter 71 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.