

Ohio Adopts Remote Electronic Notarization Law

February 19, 2019

Bullet Point Guest Commentary

Among other provisions, S.B. 263 enacts the Notary Public Modernization Act (the “Act”). The Act will make remote online notarizations (electronic notarizations where the notary public is in a different location than the principal whose signature is being notarized) equivalent to traditional notarizations. The Act, expected to become fully effective in the fourth quarter of 2019, will establish appropriate safeguards to ensure that fraud and capacity issues will be minimized in the remote notarization process. With the Act, Ohio joins a growing number of states to facilitate the use of online notarial acts.

As a preliminary matter, the Act specifically provides that an electronic document that is signed in the physical presence of a notary public with an electronic signature (not an online notarization) and that is notarized with an electronic seal is considered to be an original document. By the Act’s terms, a printed copy of the electronically executed document must be accepted by county auditors, engineers, and recorders for purposes of approval, transfer, and recording, to the same extent as any other type of document. This provision should remove any remaining doubt as to the effectiveness of such documents and notarizations.

Under the Act, appearing in person before a notary public will now include situations where the notary public and the principal are in different locations and are interacting by means of live two-way, audio-video communication, which substantially modifies the traditional personal appearance requirement applicable to notarial acts.

In such an online notarization, the Act envisions the notary public relying on appropriate technology to determine the identity of the person appearing before the notary. Such technology will include “credential analysis” to affirm the validity of a government-issued identification through the review of public and proprietary data sources; while “identity proofing” will affirm a person’s identity through the review of public and proprietary data sources. As an alternative, the notary public can rely on verification of the principal’s identity by one or more credible witnesses who appear in person before the notary and who have had their own identities verified.

These provisions will facilitate the development and use of online notary public services that will support fully online, electronic transactions (e.g. residential mortgage transactions) by eliminating the need to notarize documents in an offline, in-person environment. It should be noted, however, that the Act establishes only broad principles and delegates to the Secretary of State the task of adopting rules and standards for performing online notarizations, conducting credential analysis and identity proofing, and for the use of supporting

technology. The Act's effective date is September 20, 2019 and until the Secretary of State publishes those rules at a later date, online remote notarizations will remain an aspiration in Ohio rather than a reality.

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