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SENATE No. 2645

Chapter 71 of the Acts of 2020

THE COMMONWEALTH OF MASSACHUSETTS

(2019-2020)

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 acknowledgment, 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.

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