



NEW YORK STATE
BAR ASSOCIATION

Resolution and reports of the New York State Bar Association **Task Force on Notarization**

April 2023

Approved by the New York State Bar Association House of Delegates on April 1, 2023.

New York State Bar Association
Resolution to Approve Reports and Recommendations of
Task Force on Notarization
Approved by the Executive Committee on March 2, 2023

WHEREAS, Executive Law 130 and 135-c, and regulations from Secretary of State 19 NYCRR 182 have been recently promulgated regarding electronic and non-electronic notarizations;

WHEREAS, these new laws and regulations have a significant impact on notaries and attorneys;

WHEREAS, there is no statutory basis for the record keeping and retention requirement for non-electronic notarizations;

WHEREAS, the new laws and regulations are unduly broad and burdensome on notaries and attorneys;

WHEREAS, the new law requires that a licensed electronic notary select a Credential service provider who meets certain technical requirements;

WHEREAS, in many circumstances, the licensed electronic notary lacks sufficient knowledge to determine whether the technical requirements have actually been met; and

WHEREAS, there is no showing that the new laws and regulations will diminish concerns of fraud that the legislation was intended to address;

WHEREAS, the efficiency of attorney notaries will be impacted by the above resulting in increased costs to consumers,

NOW, THEREFORE, IT IS RESOLVED that the Executive Committee approves the Reports and Recommendations of the Task Force on Notarization.

AND IT IS FURTHER RESOLVED that the officers of the New York State Bar Association are hereby authorized to take such other and further action as may be necessary to implement this resolution.



Report on Notary Regulations

On January 25, 2023, the New York Department of State promulgated regulations purporting to implement New York's new Electronic Notary legislation. However, these new regulations contained new record keeping requirements that have no basis in the enabling legislation, are not tailored to meet their goal, and create significant challenges for attorneys practicing in New York State.

Notary Record Keeping Regulations

New regulations were released by the Department of State in January 2023 implementing a new electronic notarization process.¹ These electronic notarization regulations contained record keeping requirements for all New York notaries, effective January 25, 2023.

These new regulations contain §182.9 which requires notaries to maintain records for all notarial acts. Such records must be made contemporaneously with the notarial act and must include:

1. the date, approximate time, and type of notarial acts performed;
2. the name and address of any individuals for whom a notarial act was performed;
3. the number and type of notarial services provided;
4. the type of credential used to identify the principal;
5. the verification procedures used for any personal appearance before the notary; and
6. for electronic notarial acts, identification of the communication technology, certification authority, and verification providers used.

These records must be maintained for at least 10 years and must be “capable of being produced to the secretary of state and others as necessary in relation to the performance of the notary public’s obligations”² under the notary law.

Absence of Statutory Authority

Notaries are governed by multiple sections of New York law.³ A review of the Notary Public License Law reveals no statutory basis for a record keeping and retention requirement prior to the recent passage of the electronic notarization legislation. In fact, since 2015, the New York State legislature has repeatedly rejected efforts to statutorily impose notary record keeping requirements for even the more limited purpose of residential property transfers.⁴

¹ See Notary Public License Law (January 2023),

(https://dos.ny.gov/system/files/documents/2023/01/notary-public-license-law_01.2023.pdf).

² See Notary Public License Law above page 15; §182.9 Recordkeeping and Reporting, page 18.

³ See above.

⁴ An Assembly bill and Senate companion have been introduced in the legislature every year since 2015, except this year when Senate companion legislation has not been introduced. The Senate versions have never reached a vote. The Assembly passed the legislation during the 2021-2022 (A4277A) session. The bill has been reintroduced for the 2023-2024 session (A329). Additionally, Senate bill S218, introduced as S904 in the previous legislative session, currently in the Senate Finance Committee, would in addition to record keeping requirements, impose a form colloquy asking the principal questions the answers to which the notary is required to record and retain. A previous version of this bill was introduced during the 2021-2022 legislative session as S9404.



In 2022, Executive Law §135-c was passed outlining the requirements and procedures to be followed for electronic notarization.⁵ The legislation delineates conditions that must be met to engage in electronic notarization but does not modify existing requirements for in person notarizations. The new law also requires separate registration by those notaries who intend to engage in electronic notarization.

As it relates to retaining records, Exec Law §135-c(2)(b) requires as follows:

If video and audio conference technology has been used to ascertain a documents signer's identity, the electronic notary shall keep a copy of the recording of the video and audio conference and a notation of the type of any other identification used. The recording shall be maintained for a period of at least 10 years from the date of transaction.

This statutory record keeping language applies only to electronic notary acts using electronic technology for signer identification purposes.

The Department of State was given express authority under the statute to promulgate regulations regarding an electronic notarial act conducted utilizing communication technology.⁶ The unconsolidated law provisions implementing electronic notarization provided for “the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act...”⁷ The legislature could have, but did not, provide for the promulgation of new regulations dealing with notarization other than electronic notarization. as was done, for example, with advertising by notaries public.⁸ Pursuant to longstanding principles of statutory construction, when one or more things of a class are expressly mentioned, others of the same class are excluded. Since the notary statute expressly provides for record keeping and retention for electronic notarization, it excludes the same for in person notarization. This is further confirmed by the fact that the legislature has tried and failed to enact legislation in this regard even for the limited purpose of real property transfers.⁹

⁵ Full text of Executive Law §135-c Electronic Notarization - <https://casetext.com/statute/consolidated-laws-of-new-york/chapter-executive/article-6-department-of-state/section-135-c-effective-1312023-electronic-notarization>.

⁶ See NY Executive Law §§135-c and 137-a (renumbered) Electronic Notarization, subdivision 2 (a) and §137-a subdivision 5(e).

⁷ Chapter 767 Laws of 2021 §3 and Chapter 104 Laws 2022 §6.

⁸ For comparison see NY Executive Law §135-b subdivision 6 providing that the secretary may promulgate rules and regulations governing the provisions dealing with advertising by notaries public.

⁹ Nor does Executive Law §91 apply, which authorizes rules which “regulate and control the exercise of the powers of the department of state and the performance of the duties of officers, agents and other employees thereof.” See also *Campagna v. Shaffer*, 73 N.Y.2d 237, 536 N.E.2d 368, 538 N.Y.S.2d 933 (1989), where the Court of Appeals followed the principle in construing legislation that when one or more things are expressly mentioned others are excluded and found the Secretary of State exceeded the statutory prohibition on blockbusting by administratively limiting all broker-initiated solicitation, not just the illegal solicitation banned by the legislature.



Overly Broad to Address Deed Fraud

There has been a significant amount of conversation in many circles recently about the need to protect against fraud in the conveyance of residential real property. Some have even referred to it as an epidemic.¹⁰ While it is critical that systems be implemented to protect home-owners from deed fraud, these specific records and retention regulations do not advance that goal.

Prior to the records and retention requirements, notaries were required to sign their name to the deed and include their notary identification number. This makes it possible to identify the notary for all deed transfers. Keeping a log noting dates, times, locations, documents and identification for a decade, while burdensome, is not an obstacle for those using false identification or those who are simply bad actors. Additionally, with deed fraud as the main concern, if the record keeping and retention requirements are intended to be part of the solution, there is no need to apply the regulations to all notarial acts. The regulations should be more narrowly tailored applying just to the conveyance of real property by non-attorneys.

Deed fraud is a serious concern and should be addressed with targeted, intentional solutions to meet that goal. As drafted, these regulations apply far broader than necessary and are not actually tailored to achieve deed fraud reduction.

Issues Regarding Record Keeping Requirements for Attorneys as Notaries

Attorneys, as officers of the court, should be exempt from these record-keeping requirements. The application of these regulations to attorneys and their employees is superfluous, encroaches on attorney client privilege, and imposes unduly burdensome record retention requirements.

Attorneys are subject to a framework of extensive fiduciary and ethical obligations to their clients, with disciplinary proceedings and oversight already built in.¹¹ These obligations continue in the role of notary for such clients. Therefore, adding to that the notary record keeping and retention requirements is unnecessary, and poses an additional administrative burden for all attorneys. Rural attorneys with limited support staff in particular will find it extremely difficult and costly to adhere to these new regulations. Even more concerning is the impact these record and retention rules will have on the already limited budgets of Legal Services programs who are often required to notarize documents for their clients.

The new Department of State regulations raise serious attorney client privilege issues. Attorneys and members of their staff will often notarize statements by clients which are privileged or contain privileged information. The requirement that the notary log be capable of being produced to the secretary of state and others as necessary in relation to the performance of the notary public's obligations presents serious issues in this respect.

¹⁰ See for example the December 2018 Report of the Grand Jury of the Supreme Court First Judicial District issued December 2018 calling residential deed fraud an epidemic affecting every county in the state. <https://www.manhattanda.org/wp-content/uploads/2018/12/Deed-Fraud-Grand-Jury-Report.pdf>.

¹¹ See New York Rules of Professional Conduct.



Current notary law reflects the need to treat attorneys differently, and attorneys should be exempt from these rules as well. For example, under Exec. Law §130(2), attorneys admitted to practice can be appointed as a notary without an examination. Additionally, a notary generally cannot act if they have a pecuniary interest in a matter. However, Exec. Law §135 allows an attorney who is a notary to act as such for their own client in respect of “any matter, claim, action or proceeding.”

Conclusions and Recommendations

- 1) Record keeping requirements for notarizations other than electronic notarizations have no statutory basis and should be repealed.
 - 2) The record keeping requirements for notarizations other than electronic notarizations contained in the regulations do not advance the goal of deed fraud reduction and should be repealed.
 - 3) The application of the record keeping and record retention regulations to attorneys acting in the regular course of the attorney’s business is superfluous, implicates attorney client confidentiality, and imposes burdensome record retention requirements.
 - 4) If the regulations are not repealed, a notary public who is an attorney at law regularly admitted to practice in this State or an employee of such attorney acting in the regular course of the attorney’s business should not be required to maintain records of notarizations other than electronic notarizations.
 - 5) The Association shall support legislation and engage in legislative advocacy as appropriate to bring about these recommendations.
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Task Force on Notarization

Richard C. Lewis, co-chair
Ellen G. Makofsky, co-chair
Gerard Antetomaso
Megan Curinga
Michael de Freitas
David Goldfarb
Jaime Dale Lewis, Main Drafter
Michael Markowitz
John Owens Jr.
Lynn Poster-Zimmerman
Michael A. Ross
Joshua Werbeck
Omid Zareh
Thomas J. Richards, staff liaison



Report on Remote Online Notarization Credentialing Regulations

New York, one of the last states to allow RON, places the burden to use required technology on the notary public instead of the third-party provider.

Specifically, as defined in rule [19 NYCRR 182.2](#), to perform a remote online notarization (RON), a licensed electronic notary must use a “Credential service provider” to provide “Identity proofing” through “Communication technology.” Pursuant to rule [19 NYCRR 182.4\(2\)](#), the electronic notary must “use only those vendors or providers who comply with the standards outlined in this Part and any communication or reporting relating to those standards as required by the secretary of state.” Pursuant to rule [19 NYCRR 182.6](#), the third-party provider must provide “*evidence to the online notary public* of the provider's ability to satisfy requirements set forth in this rule” (emphasis added).

New York’s regulatory requirements are technical and specific. For example, the third-party provider “must meet at a minimum, the Identity Assurance Level 2 standard as outlined in the Digital Identity Guidelines of the National Institute of Standards and Technology ... document SP 800-63-3, Revision 3, dated June 2017 and includes updates as of 03-02-2020 ...” (see, [Rule 182.7](#) for Identity Proofing).

How is an attorney – let alone a layperson – able to understand whether a third-party provider meets the minimum technology requirements set forth in the rules? It is an impossible task.

Most other states that enacted RON legislation require the third-party provider to be authorized by the secretary of state. The authorization procedure is either through “self-certification” or “application and certification” issued by the secretary of state. Self-certification is when a third-party provider is approved by filing a certification of compliance (see excerpts of Florida law attached in Appendix A). The application and certification model is when the third-party provider’s application is reviewed and approved by the secretary of state (see excerpts of Colorado and Wisconsin law attached in Appendix B).

In both models, the secretary of state provides a list of authorized third-party providers. By requiring RON use of an authorized third-party provider, the onus of complying with regulatory technology requirements shifts away from the notary public.

Recommendation

The regulation should be amended so that an electronic notary must use a third-party provider licensed by the Secretary of State through a Self-Certification Model or an Application and Certification Model. The amended regulation will shift credentialing requirements away from the electronic notary to the third-party provider – simplifying the RON process. It will remove any confusion and doubt concerning compliance with the law, and promote the underlying



purpose of NY Executive Law 135-c (to adopt societal advances and new technology).¹

The Association shall support legislation and engage in legislative advocacy as appropriate to bring about these recommendations.

Task Force on Notarization

Richard C. Lewis, co-chair
Ellen G. Makofsky, co-chair
Gerard Antetomaso
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John Owens Jr.
Lynn Poster-Zimmerman
Michael A. Ross
Joshua Werbeck
Omid Zareh
Thomas J. Richards, staff liaison

¹ See, [2021 New York Senate Bill No. 1780, New York Two Hundred Forty-Fourth Legislative Session](#).



Appendix A

Self-Certification Model

Florida is an example of a self-certification model. Self-certification is through a [form](#) filed with the secretary of state. Pursuant to Florida statute,

“A RON service provider must file a self-certification with the Department of State, on a form adopted by department rule, confirming that its audio-video communication technology and related processes, services, software, data storage, or other services provided to online notaries public for the purpose of directly facilitating their performance of online notarizations satisfy the requirements of this chapter and any rules adopted by the Department of State pursuant to this section. Each certification shall remain active for a period of 1 year after the date of filing. The Department of State must publish on its website a list of each [remote online notarization] service provider that has filed a self-certification, the date of filing of the self-certification, any secure repositories to which the [remote online notarization] service provider may have delegated its duties pursuant to [FS] s. 117.245(4) from January 1, 2022, and thereafter, and the effective dates of that delegation” ([FS 117.295\[4\]\[a\]](#)).

Pursuant to Florida’s administrative code,

“Within 30 days of the effective date of this rule, and annually thereafter, a RON service provider shall provide the Florida Department of State, a self-certification form confirming that its audio-video communication technology and related processes, services software, data storage, or other services provided to online notaries public for the performance of online notarization satisfy the requirements of Chapter 117, F.S., and any rules promulgated by the Florida Department of State pursuant to Section 117.295, F.S.” (FAC 1N-7.005[2][a]). Form Number DS-DOC-51 (“RON Service Provider: Self-Certification and Required Information”) must be used to report this information ([FAC 1N-7.005\[2\]\[d\]](#)).

“The RON service provider’s self-certification is effective for a period of 1 year after the date the RON service provider files it with the Department” ([FAC 1N-7.005\[2\]\[b\]](#)).



Appendix B

Application and Certification Model

Colorado is an example of an application and certification model. The third-party provider must submit an [application](#) and receive approval from the secretary of state before the provider can provide services to a Colorado remote notary public. The regulation outlines the criteria and standards for approving providers. Colorado's regulatory language sets forth the following:

5.3. Requirements for providers

5.3.1 Provider Protocols

(a) The Colorado Secretary of State's Provider Protocols (December 1, 2020) are hereby incorporated by reference.

(1) Material incorporated by reference in the Notary Rules does not include later amendments or editions of the incorporated material.

(2) Copies of the material incorporated by reference may be obtained by contacting the Colorado Department of State, 1700 Broadway, Suite 550, Denver, CO 80290, (303) 894-2200. Copies are also available online at <https://www.sos.state.co.us/pubs/notary/home.html>

(b) All providers must meet the requirements of the Provider Protocols.

5.3.2 Application

(a) A provider must submit the approved application form and receive approval from the Secretary of State before the provider can provide services to a Colorado remote notary public.

(b) The applicant must provide to the Secretary of State in its application:

(1) The certification required by section 24-21-514.5(11)(a), C.R.S.

(2) The following information:

(A) The names of all business entities and any of their affiliates that will have access to either personally identifying information and any non-personally identifying data gathered during the remote notarization process and procedures; and

(B) A copy of the data privacy policy provided to users, which clearly specifies the permissible uses for both personally identifying and non-personally identifying data.

(3) All data and technology specifics required in the application and set forth in the Provider Protocols under Rule 5.3.1.

(c) At the time of application, the applicant must be in Good Standing status as a business entity registered to do business in Colorado and must continue to



maintain that status while providing remote notarization services to Colorado remote notaries public.

(d) The Secretary of State may require an applicant to supplement its application with additional information, including an in-person demonstration or electronic demonstration of the applicant's system.

(e) The applicant must pay the required application fee.

5.3.3 Criteria and standards for approval of remote notarization system providers.

(a) In order to be approved and maintain continuing eligibility, a remote notarization system provider must:

(1) Provide a remote notarization system that complies with the technical specifications of these rules and the standards, including data security and integrity requirements, set forth in the Secretary of State's Provider Protocols under Rule 5.3.1;

(2) Verify the authorization of a Colorado notary public to perform remote notarial acts before each remote notarization;

(3) Suspend the use of its remote notarization system for any remote notary public if the notary's underlying commission or the Secretary of State's approval of the notary public to perform remote notarizations has been denied, suspended, or revoked by the Secretary or when the notary has resigned; and

(4) Ensure that access to a remote notary public's electronic signature and seal is limited solely to the remote notary public and protected by the use of a password authentication, token authentication, biometric authentication, or other form of authentication that is described in the remote notarization system provider's application.

(5) Verify that a Colorado remote notary public has Active status with the Secretary of State's office at the time of each remote notarization.

(<https://regulations.justia.com/states/colorado/1505/1505/rule-8-ccr-1505-11/section-8-ccr-1505-11-5/>).

Wisconsin is another example of an application and certification model. Pursuant to Wisconsin law, a third-party technology provider must meet certain standards to ensure that acts performed using their technologies will be accurate, authentic, adequately preserved, and resistant to tampering. The Wisconsin Department of Financial Institutions and the Remote Notary Council have established procedures to approve providers of communication technology for use by Wisconsin notaries when performing remote online notarial acts.

To become an approved communication technology provider, the provider must return a completed [application](#) to the Department of Financial Institutions, appear before the Remote



Notary Council to answer questions, and satisfy the Council that its communication technologies meet the standards for providers under Wisconsin law.

Wisconsin law sets forth the following:

[DFI-CCS 25.04](#). Providers of communication technology. (1) Remote notary council approval required. (a) Except as provided in sub. (1) (b) of this section, a provider of communication technology used to perform notarial acts for remotely located individuals must obtain the approval of the remote notary council before allowing its platform to be used by a notary public of this state to perform a notarial act for a remotely located individual.

(b) A provider that was provisionally approved by the department prior to the effective date of these rules must submit the application materials described in sub. (2) of this section no later than August 1, 2020. Such provider's approval remains effective until such time as the remote notary council denies the application under sub. (3) of this section, in whole or in part, or the approval is restricted or terminated under sub. (5) of this section.

(2) Requests for approval; contents. A provider of communication technology may request approval of the remote notary council by submitting to the department verified documentation or other evidence sufficient to detail:

(a) how the provider will ensure that notarial acts for remotely located individuals performed on the provider's platform by a notary public of this state comply the requirements of ss. [140.145](#) and [140.20](#), Stats., and this chapter;

(b) the proposed methods of performing a notarial act involving a remotely located individual using the provider's communication technology;

(c) the process or service used to verify the identity of a remotely located individual by a review of personal information from public or private data sources ("identity proofing");

(d) the means used to ensure that notarial acts for remotely located individuals are accurate, authentic, resistant to tampering, and tamper-evident;

(e) the means used to ensure that all parties using the communication technology are viewing the same record, and that all signatures, changes, and attachments to the record are made in real time;

(f) the means used to ensure that the communication technology is secure from hacking or interception;

(g) the means used to ensure that notarial acts for remotely located individuals are recorded and adequately preserved for a period of at least seven years after the recording is made;



- (h) the means used to ensure that notaries public are properly instructed and competent to perform notarial acts for remotely located individuals using the provider's communication technology;
 - (i) all jurisdictions in which the provider's communication technology has been approved or disapproved for the performance of notarial acts for remotely located individuals;
 - (j) the provider's experience and track record in utilizing the aforementioned means, processes, and procedures in other jurisdictions;
 - (k) whether the provider has been approved or disapproved for use by companies that provide insurance for transactions requiring notarized signatures, such as land transactions;
 - (L) any warning letters or complaints received or disciplinary actions taken against a provider in any other jurisdiction;
 - (m) any pending, threatened, or adjudicated lawsuits against the provider relating in any way to the performance of notarial acts using the provider's communication technology in any jurisdiction;
 - (n) whether the provider has and will maintain insurance coverage or other security for potential errors or omissions relating to the communication technology or provider's processes;
 - (o) any other such information that may be necessary or helpful to evaluate the provider's request for approval; and
 - (p) any other such information that may be requested by the department or the remote notary council to aid in evaluating the request for approval.
- (3) Requests for approval; procedure. (a) Once the department is satisfied that an application is bona fide and includes the information required in sub. (2), the department will forward the application materials to members of the remote notary council.
- (b) The remote notary council will place the application on its agenda for deliberation at one of its next two regularly scheduled meetings or at any interim special meeting it may deem necessary and appropriate. The department will notify the applicant of the time and date of the meeting.
- (c) A representative of the applicant with knowledge of its processes and authority to make binding representations on its behalf must be available to participate in the meeting and respond to questions from remote notary council members. Unless otherwise specified by the remote notary council, the representative may participate by phone or other remote means.
- (d) Upon consideration of the merits of the applicant and application, the remote notary council may approve the application, impose additional conditions or



limitations upon approval, deny the application, table the application for further deliberation at a subsequent meeting, or require the applicant to supplement the application with additional explanations, information or evidence of its ability to ensure compliance with state law.

(e) Upon approval of a provider's application, the department will add the provider to a list of approved providers of communication technology for notarial acts for remotely located individuals.

From: [Richard Gutierrez](#)
To: [reportsgroup](#)
Subject: Fwd: New Regulations on Notarization
Date: Wednesday, March 1, 2023 11:06:01 AM

----- Forwarded message -----

From: **Richard Gutierrez** <richlaw101@gmail.com>
Date: Wed, Mar 1, 2023 at 7:09 AM
Subject: New Regulations on Notarization

Dear President Wallach,

In my individual capacity as a member of the Association, I write in support of the recommendations of the NYSBA Task Force on the modification of notary regulations enacted by NYS.

I believe the record keeping requirement is both burdensome and unnecessary. It is an onerous responsibility for attorneys in general and solo practitioners in particular, to be required to make and retain records for ten years, as a notary.

As a solo practitioner and notary for nearly 37 years, I have not had an issue with any of the documents I notarized. I can only speak for myself but I think the new regulations should create an exemption for attorneys.

In my role as Chair of the Committee on Professional Discipline, the notary regulations were discussed at our meeting on February 24, 2023.

Although this issue was on our Agenda for informational purposes only and therefore not voted on, some members believed the regulations should provide an exemption for attorneys. Again, the position taken in this email is solely mine.

Respectfully submitted,

Richard M. Gutierrez

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Richard M. Gutierrez
Attorney at Law
118-35 Queens Boulevard, Suite 1500
Forest Hills, New York 11375
(718) 520-0663

--

Richard M. Gutierrez
Attorney at Law
118-35 Queens Boulevard, Suite 1500

Forest Hills, New York 11375
(718) 520-0663



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OF ERIE COUNTY

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438 Main Street, Sixth Floor
Buffalo, New York 14202
Phone 716-852-8687
Fax 716-852-7641
mail@eriebar.org
www.eriebar.org

February 28, 2023

Via email

Thomas J. Richards, Esq.
Deputy General Counsel
New York State Bar Association
One Elk Street, Albany, NY 12207
TRICHARDS@NYSBA.ORG

Dear Mr. Richards,

I attach correspondence in response to the request for comments regarding reports prepared for the NYSBA Task Force on Notarization. The attached letter authored by an attorney in Western New York captures substantial concerns of our real property lawyers regarding proposed changes to the laws governing notaries in New York State.

With regard to The Task Force on Notarization's inquiry on whether the BAEC has received any feedback from Assemblywoman Walker on the comments, we have not at this time.

Thank you for your work on this issue.

Very truly yours,

JILL K. BOND
President

Attachment

cc: Timothy J. Graber, Vice President
Anne M. Noble, Executive Director
Glenn Speller, Real Property Law Committee Chair

COOKE & STEFFAN
ATTORNEYS AT LAW
13132 MAIN STREET
ALDEN, NEW YORK 14004

BY APPOINTMENT:
5127 WILLOWBROOK WEST
CLARENCE, NY 14031

THOMAS A. STEFFAN

TELEPHONE 716-937-9111
FACSIMILE 716-937-4508

RICHARD T. COOKE
1913-2008
EDWIN F. STEFFAN
1924-1995

February 17, 2023

Hon. Latrice M. Walker
NYS Assembly
400 Rockaway Avenue
2nd floor
Brooklyn, NY 11212

Re: Assembly Bill 00329
Re Notaries and Residential Real Estate Transactions

Dear Assemblywoman Walker:

I wish to comment on the recently introduced bill no. 00329, regarding the maintenance of and filing of a notarial record on every residential real estate closing.

I am an attorney in the small town of Alden, NY, located about twenty miles east of Buffalo. I am a solo practitioner. I prepare deeds, mortgages, and other real instruments for residential real estate closings held mostly in Erie, Genesee and Wyoming Counties. I often travel twenty miles or more, one way, to record my closings.

I also take client signatures on my legal documents. As an attorney, I am also qualified as a notary public, and I renew my license every four years, as required by law.

The proposed law would require me to maintain a "Notarial Record", signed by both the residential seller and purchaser, for every home closing that I participate in. This would be very burdensome because I do over one hundred closings per year. The bill would also require the "record" to contain the signatures of both Seller and Purchaser, but our practice in Western New York has attorney representatives meeting for the closing, not the individual clients. The attorneys obtain the signature of their own respective clients, then meet to exchange documents and funds. The clients are not present at the closing, so it would be

impossible for one notary to obtain the signatures of both Seller and Purchaser on his or her notarial record.

The bill which you sponsor also requires the filing of the record with the County Clerk, within fourteen (14) days from the date of closing. Who is to pay the filing fee, if any? Why is the County Clerk held responsible to collect this information without any funding to implement the program? This bill would add unnecessary cost and time delay to every closing.

The County Clerk's function is to act to collect information which benefits the public interest. The County Clerk is the official clerk of the Courts, public institutions. Why are you asking the clerk to keep these records undisclosed to the public? Obviously, because they contain personal identification information of the signers. Would it not be better if the County Clerk was never asked to keep this information at all? What a waste of time and money for a public official to keep non-public information on residential real estate closings. For example, the Wyoming County Clerk has four (4) employees, and I assume that these employees would be overwhelmed by the additional record keeping burden.

In all of my thirty-five years of practice in Western New York I have never seen one case of fraudulent notary practice. Our closings are done by attorneys, not independent title companies. The attorneys have an Ethical Code which requires that they zealously and independently represent their clients, free from any conflict of interest. It is unrealistic to believe that they would jeopardize their license to practice law for a few dollars of notary fees, or to participate in a fraudulent deed recording scam.

The New York State Legislature and Governor this year have already made my solo law practice more expensive by requiring me to keep a notarial journal for ten years going forward for every notarization that I do. I am finding that most of my journal entries show that I am personally aware of the identity of my clients, having represented them previously, or having met them personally when we negotiated the residential real estate contract. There is no need for me to even ask for proof of their identification in 95% of my notarial transactions. I know them already, why should I ask them for their drivers license or social security card? There is an assumption made by the legislature that everyone in the state is practicing blind, meeting people in rushed situations and slapping notarizations on anything that comes in front of them in order to get a closer's fee. This is far from the truth here in Western New York. Thus, your bill is both unnecessary and would now require me to keep two (2) journal records for the same deed notarization. One for the ten (10) year limit for any record notarized, and the second for the seven (7) year limit for the real estate document notarized. What if I am notarizing a Power of Attorney that may be used on a Real Estate document at a later date. Which journal do I need to record that one in?

I understand that the problem of fraudulent notarization may be occurring in New York City or the five boroughs, where attorneys may not be attending closings, but only drafting the legal documents. If so, then your bill may be pertinent for local legislation only on a citywide basis, not for statewide practice. You are using a shotgun to kill a mouse.

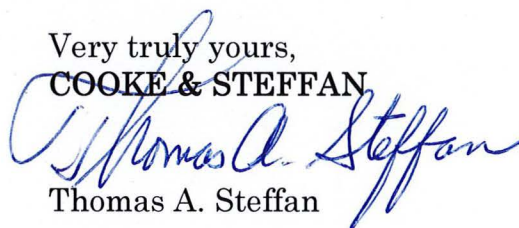
This bill is a consequence of the increasing cost of legal practice which results in attorneys using non-legal contractors to implement parts of the traditional home closing at a lower, apparently more competitive cost to the client. I believe that it is likely that "closers" and "contract notaries" are the source of the fraud problem. Perhaps a statewide bill is needed to prevent that practice, i.e., to require that all residential real estate documents must be notarized by attorneys or their employee paralegals only. This would do much to alleviate the problem without radically changing the practice for attorneys here in the Buffalo and Rochester area, zone 1 under the Title Insurance Rate Act, where attorneys are involved in the home closing process from start to finish.

I would very much appreciate your response that I could share with my fellow residential real estate law attorneys in Western New York.

Thank you for your attention herein.

Very truly yours,

COOKE & STEFFAN



Thomas A. Steffan

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Memorandum

To: Sheryl Galler, Esq. Chair of WILS
From: Linda Redlisky, Esq.
Date: March 1, 2023
Re: Electronic Notarization Concerns

I have had the opportunity to review two proposed reports drafted by the Task Force on Notarization: first, the Report on Remote Online Notarization Credentialing Regulations (the "RON Report") and second, the Report on Notary Regulations (the "Notary Regs").

As to the RON Report, WILS agrees with the recommendations submitted by Task Force in its entirety. Specifically, the Women in Law Section prefers that the regulation is amended so that an electronic notary must use a third-party provider licensed by the Secretary of State through an Application and Certification Model (referenced in Appendix B). This model insures that the credentialing requirements required by 19 NYCRR 182.2. are shifted to the third-party provider. Moreover, the Secretary of State is responsible for authorizing third-party providers, assuring attorneys/notaries that the providers are in compliance. In this way, attorneys/notaries who seek to provide remote online notarization are shielded from liability for unwittingly using a provider that fails to meet the appropriate standards required by 19 NYCRR 182.2.

As to the Report of Notary Regulations, WILS' position as to the Conclusions and Recommendations is as follows:

- 1) Record keeping requirements for notarizations other than electronic notarizations have no statutory basis and should be repealed. AGREED
- 2) The record keeping requirements for notarizations other than electronic notarizations contained in the regulations do not advance the goal of deed fraud reduction and should be repealed. NO POSITION
- 3) The application of the record keeping and record retention regulations to attorneys acting in the regular course of the attorney's business is superfluous, implicates attorney client confidentiality, and imposes burdensome record retention requirements. AGREED
- 4) If the regulations are not repealed, a notary public who is an attorney at law regularly admitted to practice in this State or an employee of such attorney acting in the regular course of the attorney's business should not be required to maintain records of notarizations other than electronic notarizations. AGREED
- 5) The Association shall support legislation and engage in legislative advocacy as appropriate to bring about these recommendations. AGREED