
To: Members of House Judiciary Committee

From: MSBA Estate & Trust Law Section

Date: March 5, 2021

Subject: **HB 1265** – State Government – Notarial Acts – Remote Notarizations

Position: **Favorable with Amendment**

The Estate and Trust Law Section of the Maryland State Bar Association (MSBA) **supports** House Bill 1265 – **State Government – Notarial Acts – Remote Notarizations** – with amendment. **House Bill 1265** clarifies the requirements associated with identifying the person who is the subject of the notarial act and develops the procedure for a remote notarization of a tangible record, a "remote ink notarization" or "RIN."

Description of Current Law

At the time the COVID-19 shutdown began in March 2020, Title 18 of the State Government Article of the Maryland Code did not permit remote notarizations. Acting quickly to reduce in-person meetings, Governor Hogan issued Order of the Governor Number 20-03-30-04 which permitted remote notarizations using video conferencing technology (the "Emergency Order"). Practitioners in the Estate and Trust Law Section performed notarial acts under the Emergency Order primarily in two ways:

- By signing counterparts—the remotely located individual (referred to herein as the "individual") and the notary would have duplicate copies of the tangible record and would each sign their copy. The original signatures would then be compiled by the attorney.
- By transmitting the signed record by fax, mail, or email to the notary who would then perform the notarial act.

On October 1, 2020, in the middle of the pandemic, an amendment to Title 18 that had been passed during the 2019 Session became effective. That amendment, the Revised Uniform Law on Notarial Acts ("RULONA"), provided a permanent structure for remote notarizations but specifically excluded wills and trusts from its remote notarization provisions. Governor Hogan passed a second emergency order, Order of the Governor Number 20-09-29-01, which suspended

RULONA's exclusion of wills and trusts so that those documents could be notarized remotely under the terms of RULONA while the state of emergency continued.

There is a substantial difference between how remote notarizations are performed under the Emergency Order and under the terms of RULONA. RULONA, as interpreted by the Secretary of State's binding guidance, does not permit remote notarizations of tangible records. Instead, a remote notarization under RULONA must be done electronically through one of the 11 vendors approved by the Secretary of State. These remote electronic notarizations are known as "remote online notarizations" or "RONs."

RULONA also put in place a highly technical method of confirming an individual's identity when the notary is unable to identify them by personal knowledge or the testimony of a credible witness. This procedure is known as identity proofing and credential analysis.

Problem with the Current Law

There are three ways a notary may identify a person appearing before him or her: personal knowledge, testimony of a credible witness, or presentation of identification. These methods of identification are not specific to remote notarizations, they have been the generally accepted methods of identification in Maryland and other jurisdictions for years. Because it is inherently difficult to examine identification over a video conference, RULONA established the identify proofing and credential analysis process so that an individual's identity could be established through electronic means. Since the identify proofing and credential analysis process was created to address the unique issues present when a notary must identify an otherwise unknown individual over a video conference, it only applies when a notary cannot identify an individual by personal knowledge or testimony of a credible witness.

Even though Section 18-214(a)(1) of the State Government Article states that the identify proofing and credential analysis process is only necessary when the notary identifies an individual through the presentation of identification and *not* by personal knowledge or the testimony of a credible witness, the section setting out the procedures for identity proofing and credential analysis, Section 18-223, can be interpreted to apply to all remote notarizations. This application of identify proofing and credential analysis to every remote notarization would be a departure from the traditional means of identifying an individual and is not consistent with the requirements articulated in Section 18-214(a)(1). This lack of clarity leaves notaries uncertain about the proper procedure for identifying an individual during a remote notarization.

RULONA poses another issue in that it was drafted with RONs in mind, not remote notarizations of a tangible records, or RINs. While acting under the Emergency Order, the members of the Estate and Trust Law Section had become accustomed to using RINs. RINs worked especially well for smaller firms that cannot afford the annual and transaction fees associated with RON vendors (for a summary of these fees, see Appendix attached) and for clients who are not tech-literate.

How the Legislation Solves the Problem

HB 1265 clarifies that the identity proofing and credential analysis procedure is only required when a notary identifies an individual through the presentation of identification, but that it is not necessary when the notary identifies the individual by personal knowledge or testimony of a credible witness.

HB 1265 permanently removes the exclusion of wills and trusts from RULONA's remote notary provisions.

The amendment to HB 1265 also adds Section 18-214.1 to Title 18 to allow for the remote notarization of a tangible record, or RINs. Similar to the Emergency Order, Section 18-214.1 permits a notary to perform a notarial act remotely on a tangible record. There are two acceptable methods to perform a RIN under 18-214.1, both require the notary and the individual to participate in an audio-video session. A notary may notarize the tangible record that the individual has signed and then sent to the notary, or a notary may notarize a counterpart of the tangible record. For either situation, the individual must complete a declaration stating that the tangible record is the same, whether transmitted or in counterpart, that the notary notarized. This notarial act is still subject to the requirements of Section 18-214(a)(2) that the notary be "reasonably able to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a signature."

In addition, the amendment to HB 1265 revises Section 18-107 to permit the Secretary of State to adopt regulations increasing the fees that can be charged for a notarial act from \$4 to \$25 for an original notarial act and from \$4 for \$50 for a notarial act performed under Section 18-214. As reflected in the Appendix, almost all remote notarization platform vendors charge a fee per transaction that exceeds the current amount a notary can recoup from the individual under Section 18-107. These out-of-pocket costs per transaction plus the annual fees place a financial burden on many solo and small firms. Allowing the Secretary of State to adopt regulations increasing the fee will help alleviate this burden.

Finally, at the request of various stakeholders who see an urgent need for this legislation, including members of the Estate and Trust Law Section, the amendment changes the effective date of this legislation, if passed, from October 1, 2021, to June 1, 2021.

Permitting remote notarizations of tangible records, or RINs, is not merely a matter of convenience, nor is it limited in scope to the COVID-19 pandemic. Many individuals, often due to limitations relating to their health or disability, are unable to leave their homes for the purpose of having a document notarized. Those same individuals frequently struggle with the more complex technology involved in RINs. As a result, these individuals effectively do not have access to a notary. This raises access to justice concerns that would be resolved by the passing of HB 1265.



For the reasons stated above, the MSBA supports HB 1265 with amendment and urges a favorable committee report.

For Further Information, Please Contact:

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Vendor	Annual Platform Fee	Transaction Fee	Additional Cost	Notes
Digital Delivery, Inc.	Only available for real estate transactions.			
DocuSign	Pricing not published.			
DocVerify	\$780	Credit-based System	\$125 activation, \$100 for digital certificate and seal, \$2.25 for each ID	
eNotaryLog, LLC	\$2,400	\$38 per transaction	\$20 notary set up fee	
Nexsys Technologies LLC	Developed for real estate closing. Price unknown because, due to "overwhelming interest" they are unable to respond to phone/online inquiries.			
Notarize Inc.	\$1,188	\$25		
NotaryCam		\$25 per notarization		No published option for a business account. Individual notaries are on the platform and are available to notarize.
OnlineNotary Inc.		\$25 per notarization		No published option for a business account. Individual notaries are on the platform and are available to notarize.
Pavaso	\$50		\$99 registration fee	No published option for a business account. Individual notaries are on the platform and are available to notarize.
SIGNiX	\$250	\$10 per transaction, \$5 for additional notary seals in that transaction		
Simply Sign LLC	Pricing not published.			