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Senate Judicial Proceedings Committee
The Honorable William C. Smith
2 East Miller Senate Building
Annapolis, Maryland 21401-1991

RE: SB 735 – State Government – Notarial Acts – Remote Notarizations

Dear Chairman Smith and Members of the Committee:

This is a very technical bill but a very important bill. Let me explain why.

Several years ago, the General Assembly passed a comprehensive bill authorizing the remote notarization of legal documents, so long as various procedures were strictly followed. At the time, the Estates and Trusts Section of the Maryland State Bar Association was concerned that the provisions of that bill did not appropriately deal with wills and trust instruments, so those documents were excluded from coverage under the bill.

Last winter, when the pandemic hit and the State essentially shut down, many elderly citizens and others as well realized that the time had come when they should execute their wills. The problem was that typically a will is executed in a small conference room in an attorney's office with the testator surrounded by the attorney, two witnesses, a Notary Public and frequently one or more other members of the family of the testator. With COVID running rampant, however, the prospect of a number of strangers gathering in a small room was unacceptable.

The leadership of the Estates and Trusts Section of the Maryland State Bar Association therefore met with the Governor's legal counsel, Mike Pedone, and they drafted an Executive Order dated March 30, 2020 under the authority of the Governor's Emergency Declaration, which the Governor promptly signed, that overrode the existing law excluding wills and trust instruments from legal documents that could be notarized remotely in order to enable the notarizations of wills and other trust instruments to be effectuated remotely.

Pursuant to the Executive Order, many Maryland citizens have executed wills and other trust instruments that have been notarized remotely throughout the pandemic. The time will come, however, when the pandemic ends and the Governor's Emergency Declaration is rescinded. At that moment, all Executive Orders issued by the Governor under the authority of the Emergency Declaration will literally evanesce. As soon as the Executive Order dealing with the remote notarizations of wills and other trust instruments ceases to exist, since the Executive Order overrode the existing law excluding wills and other trust instruments from being remotely notarized, all of the wills and other trust instruments which were notarized remotely during the

pandemic in accordance with the Executive Order will be subject to attack on grounds that they were invalidly notarized.

That is why this bill is so important. It parallels the Governor's Executive Order authorizing wills and other trust instruments to be remotely notarized and thus extends the right to remotely notarize wills and other trust instruments into the future. But the bill explicitly is made retroactive to March 30, 2020 and thus will validate all wills executed during the pandemic pursuant to the terms of the Executive Order.

My witnesses will discuss the details of the bill, but let me just provide a brief overview. Under Senate Bill 735, wills and trust instruments may now be remotely notarized just like any other legal document. But the bill makes one modest change to the existing law that applies to all remote notarizations. The current law provides that the notary must either have personal knowledge of the identity of the remotely located individual **or** must obtain a verified oath or affirmation from a credible witness as to the identity of the remotely located individual **or** must obtain satisfactory evidence of the identity of the remotely located individual by remote presentation of an identification credential **and** credential analysis **and** identity proofing of the individual. Senate Bill 735 provides that the third of those alternatives is truly an optional alternative and that the Notary Public may choose to adhere to either of the first two alternatives and not choose to follow the third alternative..

I should add that Senate Bill 735 was drafted in its original form and thoroughly vetted by the members of the Estates and Trusts Section, to whom I now turn for more detailed information about the bill.

I hope the Committee will issue a favorable report on this bill.