

# DeMoura | Smith LLP

## AN OVERVIEW OF THE MASSACHUSETTS VIRTUAL NOTARIZATION ACT

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To address the challenges posed by the COVID-19 public health emergency, on April 23, 2020, the Massachusetts Legislature passed a Virtual Notarization Act that goes into effect immediately and will remain in effect until three business days after the termination of Governor Baker's March 10, 2020 state of emergency declaration. It is expected that the Governor will sign the bill and it will become law immediately. The act permits the remote or virtual execution, notarization, filing or recording of virtually notarized legal documents such as wills, trusts, nominations of guardians or conservators, caregiver authorization affidavits, durable powers of attorney, health care proxy and HIPAA documents as well as mortgages and other documents transferring title to real estate. As with legal documents signed and notarized conventionally and in-person, care must be taken to observe the requirements of the Act in order to ensure the validity and enforceability of the document and its related transaction. This article provides an overview, and templates and sample scripts to be used by notaries to comply with the provisions of the Act.

At the outset, it is important to note that with respect to significant legal documents that require notarization only a notary who is also a Massachusetts attorney, or a paralegal under a Massachusetts attorney's direct supervision, can notarize such documents remotely or virtually. The Act clearly excludes non-attorney notaries from remotely notarizing wills, trusts, personal and asset protection documents and real estate transfer and mortgage documents. If you uncertain whether or not you need an attorney to notarize a document, you may want to get legal advice before signing.

The virtual or remote signing and notarization requires the signer and the notary to have

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access to an electronic device (computer, tablet, cellphone) that has a videoconference application, camera and microphone. Assuming that the parties have the equipment and have made the necessary scheduling arrangements, the documents may be executed and notarized remotely if:

- (a) all parties are physically located in Massachusetts during the signing;
- (b) the signers and all others in the room with the signer consent to the video and audio recording of the remote virtual session;
- (c) the signer provides satisfactory identification by video with copies subsequently sent to the notary;
- (d) all others in the room are seen on video by the notary and provide satisfactory identification by video and disclose their relationship to the signer;
- (e) the notary observes the actual execution of the documents by video;
- (f) the executed documents are delivered to the notary, as directed, for notary signature, stamp, and certification;
- (g) the notary completes an affidavit indicating receipt of the signer's identification documents, visual inspection of the credentials during the video conferences, consent to record the video conferences, confirmation that signer was physically located in Massachusetts and noting all of the individuals present in the room with the signer and their relationship to the signer.

Copies of sample certifications, affidavits and scripts for video conferences, designed to conform to the requirements of the Act are attached at the end of this article.

For the purposes of the Act, a signer's drivers' license, passport or other government-issued ID with photograph and signature satisfies the identification requirements. The signer must remember to send a copy of the front and back of the identification to the notary. For security and privacy reasons, it would be best practice to request that the identification be sent by mail rather than electronically. If the documents relate to a real estate transaction and the notary does not know the signer, a second form of identification containing the signer's photograph or signature or issued by a governmental agency, is required to comply with the Act. Acceptable secondary identification for purposes of this provision include credit cards, debit cards, social security cards, or a tax or utility bill dated within 60 days of the first video conference. Copies of the signer's identification must be retained by the notary for ten years from date of execution.

If any of the executed documents are to be recorded in connection with real estate transaction (deed, mortgage, easement etc.) a second verification video conference is required. During this second video conference, which again must conform to the location requirements as well as the formalities of identification and consent, the signer is required to verify to the notary that the document received by the notary is the same one that was executed by signer during first video conference. During this second conference the signer again consent to the audio and video recording of the remote session, must swear or affirm that they are physically located in Massachusetts and must disclose all persons who are present with them and their relationship to the signer. The other attendees in the room must consent to the audio and video recording and all must make themselves visible to the notary on the video conference

After completion of all steps required, notary can then sign and stamp the document and attach a certificate indicating that the document was notarized remotely under the act, the county where the notary was located at the time of notarization, the date of completion or date stated in body of document if a mortgage financing document.

With respect to any estate planning documents, trusts, power of attorney, HIPAA or health care proxy documents, they are considered completed as of the time they are fully executed, notarized and the notary affidavit is signed.

Documents that conform to the requirements of the Act will be considered valid for all legal purposes including for recording at the registry of deeds, the filing of a valid will or filing of any other documents with state, local or federal governments, agencies or courts.

Notaries are required to keep copies of their certifications, affidavits and video and audio recordings of the remote sessions for ten years.

As stated above, the Act permitting virtual notarization in Massachusetts is not permanent. By its own language, it is repealed three business days after the termination of the COVID-19 state of emergency by the Governor and the use of virtual notarization will thereafter be prohibited.

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## VIRTUAL/REMOTE NOTARIZATION PURSUANT TO MASSACHUSETTS VIRTUAL NOTARIZATION ACT

### Sample Script for Video (Remote) Notarization Event

#### Initial Video

Assuming all arrangements have been made and the video conference has been scheduled and all parties invited to the video conference are appearing on the notary's monitor, notary should first insure that the "recording" function of the video application software is enabled and recording the signing events.

*Hello, my name is Ken DeMoura, I am an attorney at DeMoura|Smith LLP located in Boston, Massachusetts.*

Or if a paralegal: *Hello, I am Nicole O'Hara, a senior paralegal at the law firm of DeMoura|Smith LLP and I am appearing today as a notary public under the direct supervision of Attorney DeMoura who is also a notary public appointed pursuant to Chapter 222 of the Massachusetts General Laws.*

*I am presently sitting in my Wakefield, Massachusetts office and this is a scheduled conference to permit [SIGNER] to execute documents and the notarization of the documents pursuant to the Massachusetts Virtual Notarization Act. Today is [DAY and DATE]. It is [TIME] am/pm. With me in my office today is \_\_\_\_\_.*

*Mr./Ms. [SIGNER] will you please identify yourself on camera by telling me your full name, residential address, and the address where you are presently located and from where you are participating in this video conference. Mr./Ms. [Signer] do I have your permission to record the video and audio of this conference to keep for our records and use later if necessary?*

*Will you now please hold up to the video camera the front and then the back of your driver's license or other form of government issued identification containing your photograph and signature so I can see them.*

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[If this is a mortgage financing transaction, signer must also produce a second form of ID]

*Because we are here for a real estate mortgage financing transaction, I am required to ask for and obtain a second form of identification. Will you please hold up to the video camera the front and then the back of a second form of identification that contains your photograph or signature or is issued by a governmental agency so I can see them? An acceptable secondary identification for this purpose includes a credit card, debit card, or social security card, or a municipal tax bill or utility bill dated within 60 days of today's video conference. [Have person display front and back of form of ID on the camera]*

*Thank you. Now, I am going to ask everybody else present in this video conference to identify themselves to me by appearing on the video and telling me their full name, residential address, the state in which they are presently sitting and participating in this conference, and their relationship to [Signer]. As you do this, please also hold up to the video camera the front and then the back of your driver's license or other form of government issued identification containing your photograph and signature so I can see them.*

For each person present, ask: *Mr./Ms. [Witness] do I have your permission to record the video and audio of this conference to keep for our records and use later if necessary?*

*Thank you everybody. Now we can begin the signing.*

*Mr./Ms. [Signer] Can you hold up the document that you are going to be signing today to the camera so I can see the front page and then the signature page and lastly the notary page if it is on a different page from the signature page?*

*What is the title of this document? How many pages is it? Are there any exhibits or attachments that come after the signature pages? Can you hold those up to the camera so I can see them? Do the exhibits or attachments have titles or descriptions? What are the exhibits or attachments? How many pages are they?*

*Thank you.*

*Now you are here to sign these documents correct?*

*And you have asked me to be here to act as the notary public for these documents correct?*

*And this is your free act and deed correct?*

*And you are over 18 years old correct?*

*Do you swear or affirm under the penalties of perjury that you are physically located in the Commonwealth of Massachusetts during this video conference at this present time?*

*Have you disclosed to me all other people who are present with you in the room you are in right now and that they have appeared on video during this conference?*

If witnesses present are required to sign: *And you have asked these witnesses that are here with you today to be here and witness you signing the documents and then have them sign as witnesses, correct?*

[If this is a will or estate planning document this is a good place to ask any questions that you would normally ask if the signing was live in your presence to ensure that the execution is being done while the signer is of sound mind and not under any undue influence or duress]

*Thank you. Now Mr./Ms. [Signer], I need to be able to watch you sign these documents so please put them in a place where you can sign them and I can see them and watch you while you are signing. OK, thank you, I can see the documents and I can see you, now please go ahead and start by initialing each page of the document and as you initial please say out loud what page you are initialing. When you get to the signature page, please go ahead and sign that page and say out loud that you are signing the signature page. With respect to the exhibits or attachments, go ahead and initial each page of each attachment or exhibit and say out loud what page you are initialing.*

*Have you now signed the document?*

Follow same procedure for each of the documents.

*Now this concludes Mr./Ms. [Signer's] execution of the documents. Correct? Have you signed all documents that you are requesting me to notarize?*

*The next step is for Mr./Ms. [Signer] to deliver these original documents along with copies of the front and back of the identification documents to my offices so that I can notarize them. Please deliver them by [mail/FedEx/messenger] to me at my Wakefield offices located at 607 North Ave, Suite F, Wakefield, Massachusetts 01880. Before you put them in an envelope or deliver them, please make a copy of the documents you signed today and scan them as a pdf file and email the pdf files to me at [kdemoura@demourasmith.com](mailto:kdemoura@demourasmith.com). For security and privacy purposes do not email me copies of your forms of identification.*

*[If a real estate transaction document] Now Mr./Ms. [Signer], because the documents you signed today during this video conference were executed during the course of closing a real estate transaction or involves a real estate mortgage, we are required to have a second video conference where I will hold up the documents that you are sending me and ask you to verify during the second video conference that the documents you sent me were the same documents that you signed during today's conference, do you understand that? And if you don't make arrangements with me to have that second video conference I will not be able to notarize the documents you are asking me to notarize, do you understand that?*

*Are there any questions?*

*OK, we will be in touch after we receive the original documents. This concludes the video conference. Thank you all for being here today. I am ending the meeting now.*

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## VIRTUAL/REMOTE NOTARIZATION PURSUANT TO MASSACHUSETTS VIRTUAL NOTARIZATION ACT

### Sample Script for Video (Remote) Notarization Follow-Up Event

The Massachusetts Virtual Notarization Act requires a second video conference for any documents executed in the course of closing a transaction involving a mortgage or other conveyance of title to real estate, after the signed documents are received by the notary to verify that the documents received are the same documents that were executed during the first video conference. The following is a sample script for such a follow-up video conference.

Assuming all arrangements have been made and the video conference has been scheduled and all parties invited to the video conference are appearing on the notary's monitor, notary should first insure that the "recording" function of the video application software is enabled and recording the signing events.

***Hello, my name is Ken DeMoura, I am attorney at DeMoura|Smith LLP located in Boston, Massachusetts.***

Or if a paralegal: ***I am Nicole O'Hara, senior paralegal at the law firm of DeMoura|Smith LLP and I am appearing today as a notary public under the direct supervision of Attorney Kenneth DeMoura who is also a notary public appointed pursuant to Chapter 222 of the Massachusetts General Laws.***

***I am presently sitting in my Wakefield, Massachusetts office and this is a scheduled conference to finalize the notarization of documents signed by [SIGNER] and sent to me pursuant to the Massachusetts Virtual Notarization Act. Today is [DAY and DATE]. It is [TIME] am/pm. With me in my office today is \_\_\_\_\_.***

***Mr./Ms. [SIGNER} will you please identify yourself on camera by telling me your full name, residential address, and the address where you are presently located and from where you are participating in this video conference. Mr. /Ms. [Signer] do I have your permission to record the video and audio of this conference to keep for our records and use later if necessary?***

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***Will you now please hold up to the video camera the front and then the back of your driver's license or other form of government issued identification containing your photograph and signature so I can see them?***

***Thank you. Now, I am going to ask everybody else present in this video conference to identify themselves to me by appearing on the video and telling me their full name, residential address, the state in which they are presently sitting and participating in this conference, and their relationship to [Signer]. As you do this, please also hold up to the video camera the front and then the back of your driver's license or other form of government issued identification containing your photograph and signature so I can see them.***

***For each person present, ask: Mr. /Ms. [Witness] do I have your permission to record the video and audio of this conference to keep for our records and use later if necessary?***

***Thank you everybody. Now we can begin the second stage of the notarization procedure.***

***Mr. /Ms. [Signer] Can you confirm to me that after you signed the documents that we are here about on [DATE OF EXECUTION] you sent them to me as had directed in that first video conference correct?***

***Thank you.***

***Now I have a few questions to ask you:***

***First, do you swear or affirm under the penalties of perjury that you are physically located in the Commonwealth of Massachusetts during this video conference at this present time?***

***Have you disclosed to me all other people who are present with you in the room you are in right now and that they have appeared on video during this conference?***

***\*\*Now I am holding up to the camera a document titled [Title of Document] that I received after the signing date on [DATE OF SIGNING] and after looking at this document do you swear or affirm under the penalties of perjury that the document that I am holding up to the camera and that I received is the same document that you executed during the first video conference that we had on [DATE OF SIGNING].***

***\*\*You are asking me to notarize this document correct?***

***Go through all documents asking same \*\*questions above for each.***

***Are there any questions?***

***OK, this concludes the video conference. Thank you all for being here today. I am ending the meeting now.***



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## VIRTUAL/REMOTE NOTARIZATION PURSUANT TO MASSACHUSETTS VIRTUAL NOTARIZATION ACT

### Sample Virtual Notarization Certificate

#### VIRTUAL NOTARIZATION CERTIFICATE

The undersigned certifies that:

1. The attached document was notarized remotely under the Massachusetts Virtual Notarization Act.
2. The notarial act was completed on \_\_\_\_\_.\*
3. The undersigned was located in \_\_\_\_\_ County at the time the notarial act was completed.

\_\_\_\_\_  
, Notary Public  
My commission expires: \_\_\_\_\_

Date: \_\_\_\_\_

*\*The Act provides that this certificate may recite the date stated within the body of the document for documents notarized in connection with a mortgage financing transaction.*

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## VIRTUAL/REMOTE NOTARIZATION PURSUANT TO MASSACHUSETTS VIRTUAL NOTARIZATION ACT

### Sample Virtual Notarization Affidavit

#### VIRTUAL NOTARIZATION AFFIDAVIT

\_\_\_\_\_, ss.

Pursuant to the Massachusetts Virtual Notarization Act, I hereby affirm under the penalties of perjury with respect to the documents attached that:

1. I am a notary public appointed pursuant to Chapter 222 of the Massachusetts General Laws.
2. My commission expires on \_\_\_\_\_.
3. On \_\_\_\_\_, I presided over a remote video conference to permit the principal to execute the documents attached to this affidavit.
4. I was physically located in \_\_\_\_\_ County, Massachusetts during the video conference.
5. I received a copy of each principal's current identification credentials and visually inspected the credentials during the initial video conference with each principal;
6. I obtained each principal's verbal assent to record the video and audio of the conferences;
7. I obtained each principal's affirmation that they were physically present in the Commonwealth of Massachusetts during the video conferences; and
8. I was informed that the following individuals were present in the room with the principal during the video conference and further informed that their relationship to the principal was as described below:

| Name | Address | Relationship to Principal |
|------|---------|---------------------------|
|------|---------|---------------------------|

SIGNED UNDER THE PENALTIES OF PERJURY ON \_\_\_\_\_, 2020.

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