REMOTE NOTARIZATION/ACKNOWLEDGEMENT PROCEDURES

In order to further reduce the need for personal interaction during the COVID-19 crisis, Governor Whitmer issued Executive Order 2020-74, which relaxes the existing rules on remote online notarization and online witnessing of documents. The notary or witness can observe the signer execute the document through a two-way real-time video conference, and the signer then transmits the document to the notary or witness. The Order will remain in effect until at least June 30, 2020. Here are recommended procedures for utilizing remote online notarization or witnessing of documents.

For Notarized Documents

A notary who currently holds a valid notarial commission in Michigan can utilize two-way real-time audiovisual technology through June 30, 2020.

1. The signer(s) and notary (and witnesses, if necessary) must be able to all hear and see each other.
2. The video conference must be recorded from the start of the signing process and preserved for a period of ten years.
3. The notary must confirm with the signer that he/she is physically in the State of Michigan. If the signer is not physically in the State of Michigan, the notary can only notarize the following documents:
    a. Documents intended for filing with or relating to a matter before a court, governmental entity, public official or other entity subject to the jurisdiction of Michigan;
    b. Documents involving property located in Michigan or a transaction substantially connected to Michigan.

    Note: You cannot notarize the signature of an out-of-state signer if you have actual knowledge that making the statement and signing the document is prohibited in the laws of the State they are currently in.
4. If the signer (and/or any required witness) is not personally known to the notary, the signer (and/or witnesses) must show identification to the notary while on video. If the signer (and any required witness) is known to the notary, state that at the beginning of the video recording.
5. The signer must transmit all signed documents the same day to the notary by means of fax, mail or email, or other electronic means.
6. The signatures should be free from tampering, and the notary should ensure the notary receives back the documents (i.e. notary should review and look for any evidence of tampering).
7. Once the notary has received a legible copy of the document with all necessary signatures, the notary may notarize the document and transmit the notarized document back to the signer.
8. The notary should use the date he or she witnessed the signer signing on the video call.
9. Documents may also be signed in counterparts, unless counterparts are specifically not permitted in the document.
10. Each notary must keep a journal in either a physical bound register or in a tamper-evident, permanent electronic format to record each notarization which is conducted remotely. The journal entry must include all of the following:
    a. The date, time, and nature of the notarial act.
    b. A description of the record, if any.

c. The full name and address of each individual for whom the notarial act is performed.

d. If the identity of the individual for whom the notarial act is performed is based on personal knowledge, a statement to that effect. If the identity of the individual for whom the notarial act is performed is based on satisfactory evidence, a brief description of the method of identification and the identification credential presented, if any, including the date of issuance and expiration for the credential.

e. The fee charged, if any, by the notary public.

11. We recommend using the following form of notary "stamp" when notarizing documents remotely:

[Name], Notary Public
_____ County, Michigan
My commission expires: _____
Notarized using electronic/remote technology
Signatory's location: _____ County, Michigan

For Witnessed Documents

Any person can serve as a witness to the execution of a document utilizing two-way real-time audiovisual technology through June 30, 2020.

1. If witnesses are required, follow the same procedures outlined in 1-3 above. The signer (or the signer's designee) must retain the recorded video for three years, unless state law requires a different period of retention.

2. The signer should affirmatively state on the video what document he/she is signing and hold up the title page and each signature page of the document to the witnesses so that the witnesses are able to see it clearly. Each page of the document must be numbered using the format Page x of y. Each act of signing must be captured sufficiently up close for the witnesses to observe it.

3. The signer must transmit all signed documents to the witnesses within 72 hours of signing by means of fax, mail or email, or other electronic means.

4. Within 72 hours of receipt, the witness(es) must sign the transmitted copy of the document as a witness and return the signed copy of the document to the signer or the signer's designee by fax, mail, email or other electronic means.

Recording the Documents

For the duration of this order and any order that may follow from it, financial institutions and registers of deeds must not refuse to record a tangible copy of an electronic record on the ground that it does not bear the original signature of a person, witness, or notary, if the notary before whom it was executed certifies (see draft below) that the tangible copy is an accurate copy of the electronic record.

Notary Certification

For the purpose of complying with Paragraph 10 of Executive Order 2020-74, I certify as follows: (a) I currently hold a valid notarial commission in the State of Michigan, (b) I personally observed the execution of the instrument through two-way real-time audiovisual technology that met all of the conditions of Paragraph 5 of Executive Order 2020-74, (c) the attached tangible copy is a true and accurate copy of the electronic record of the instrument, and (d) I am making this certification to facilitate the recording of such instrument with the Register of Deeds.

_____

Notary Public, _____ County, Michigan.
My commission expires: _____