

POLUNSKY BEITEL GREEN
ATTORNEYS AT LAW

To: Clients and Friends of the Firm

From: Polunsky Beitel Green, LLP

Date: June 4, 2020

Re: Temporary Authorization of Remote Ink-Signed Notarization (RIN) for Texas Real Estate Closings **EXTENDED UNTIL JUNE 30, 2020**

We want to inform you that the order of the Governor, which temporarily suspended the requirements of Texas Civil Practice and Remedies Code Section 121.006(c)(1) to permit that a notary to witness wet-signed documents in a real estate transaction by electronic means, which was originally set to expire on May 30, 2020, has now been extended until June 30, 2020, unless the state of emergency for COVID 19 is terminated sooner. This extension of the remote ink signed notary rules should provide greater flexibility for the notarization of documents in Texas in light of Covid 19 and the response to the pandemic. Under this temporary suspension, any Texas notary is able to notarize real estate documents so long as the notary:

- Witnesses the signature via a recorded two-way audio-video communication technology that allows the notary to communicate with the party executing the documents and the notary can verify the signature by sight and sound;
- Verifies the identity of the signatory by personal knowledge of the signatory, by government issued identification or by an introduction of the signatory by oath of a credible witness who knows the signatory and is known to the notary;
- During the recorded session of the audio-video communication, both the notary and the signatory need to attest to the fact that both of them are located in Texas at the time and the signatory should affirmatively identify the documents being signed; and
- The signatory should sign the documents close enough to the camera for the notary to clearly observe the signing.

In addition, the recording from the signing session must be kept by the notary for two years. The signed documents are then forwarded to the notary for the notary to affix the notary's seal and the time and date of the notarization should be shown as the date of actual signing by the signatory during the recorded session. The notary certificate should clearly state the following in substantially similar language:

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“This notarization involved the use of two-way audio-video communication pursuant to the suspension granted by the Office of the Governor on April 24, 2020, under section 418.016 of the Texas Government Code.”

PLEASE NOTE THAT THIS IS A TEMPORARY SUSPENSION OF THE IN PERSON REQUIREMENT FOR TRADITIONAL NOTARIZATION OF REAL ESTATE DOCUMENTS AND IT WILL EXPIRE ON THE EARLIER OF (A) THE TERMINATION OF THE MARCH 13, 2020 DISASTER DECLARATION OF THE GOVERNOR OR (B) JUNE 30, 2020.

We also wish to note that this remote ink-signed notary (RIN) is different from a Remote Online Notary (also known as a “RON”) in that the documents executed under the suspension by the Governor are PAPER DOCUMENTS, rather than electronic documents and the signature and the acknowledgement are applied manually by the signatory and the notary, rather than through an electronic means. As a result, once documents are executed in accordance with the Governor’s order, they should be just like any other traditionally notarized document in Texas in terms of how they will be handled by lenders, title companies, and recording offices, etc., subject, of course, to the notary and others following the rules of the order. So while the process employed for a RIN transaction looks similar to a RON in the use of two-way audio/video recording of a signing ceremony, the end result of a RIN signing is a paper notarized document with a special notary seal that shows it was performed under the temporary suspension order of the Governor. A Remote Online Notary transaction would, on the other hand, result in an electronic document, that is electronically signed and notarized. In addition, the authority for a RON transaction is authorized by statute and is not currently set to expire.

One final note relates to Texas Home Equity transactions. Although this temporary suspension allows the notary to witness the execution of real estate documents through an electronic audio/video session, the suspension does NOT change the requirement that the loan documents on a Texas 50(a)(6) transaction be signed at a proper location, which includes an office of the lender, an office of a title company, or an attorney’s office.

If you have questions regarding the contents of this alert, please let us know.

Allan Polunsky at Allan.Polunsky@mortgagelaw.com
Jay Beitel at Jay.Beitel@mortgagelaw.com
Marty Green at Marty.Green@mortgagelaw.com
Lauren Polunsky Dreszer at Lauren.Polunsky@mortgagelaw.com
Peter Idziak at Peter.Idziak@mortgagelaw.com
Andrew Duane at Andrew.Duane@mortgagelaw.com
Tye McWhorter at Tye.McWhorter@mortgagelaw.com
Doug Foster¹ at Doug.Foster@mortgagelaw.com

¹ Doug Foster is a non-lawyer and is not admitted to practice law in any state.