FLORIDA ADOPTS REMOTE ONLINE NOTARIZATIONS

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Starting on January 1st, 2020, Florida will become the twenty-first state to adopt remote online notarizations (RON), following Governor Ron DeSantis' signing of House Bill 409 into law. An "online notarization", as defined under Chapter 117 of the Florida Statutes, is any performance of a notarial act using electronic means in which the principal appears before the notary public by means of audio-video communication technology. The new law will eliminate the need to produce paper documents or personally meet with signers for all notarizations. Before taking advantage of the new flexibility and convenience created by the amendments to Chapter 117, one needs to be aware of the specific requirements in performing RON and to properly supervise the witnessing of electronic records.

A. Online Notarization Procedures

A notary public, located in the State of Florida, may perform an online notarization subject to the requirements of Section 117.265 of the Florida Statues, regardless of whether the principal and/or witnesses are physically located in Florida at the time of online notarization. The notary public must perform the online notarization using two-way audio-video communication technology (i.e., Skype, Facetime, GoToMeeting, etc.) and record the session between the notary and principal and any witnesses. At the commencement of the recording, the notary public must describe the notarial act being performed and provide a brief description or identify the records to be signed.

As a statutory safeguard, Chapter 117 has incorporated identity proofing procedures to be followed in performing RON. During the recorded conference, the notary must confirm the identity of each principal and witness appearing online, at the time the signature is taken. Identity proofing of a principal, as described in Section 117.265(4), may be accomplished by (1) the notary public having personal knowledge of each principal; or (2) remote presentation by each principal of a government-issued identification, which must be analyzed by the notary public and satisfy the credential analysis described in Section 117.295(3)(b).

Additionally, Section 117.295(3)(a) requires further identification proofing of a principal in the form of knowledge-based authentication, in which the principal is required to answer at minimum five questions, with a minimum of five possible answer choices per question. A principal must respond to each question within a 2-minute time constraint and correctly respond to 80% of the questions given. If the principal is not located in the State of Florida, the notary public must confirm, either verbally or through the principal's written consent, that the principal desires the notarial act be performed by a Florida notary public and governed under the general laws of Florida. Lastly, an amendment to Section 117.05, revised the statutory forms of acknowledgments requiring notaries to designate whether the signer appeared before the notary by physical presence or made an online appearance.

B. Supervising the Witnessing of Electronic Records

To witness an online notarization, the witness must be in the physical presence of the principal or present through audio-video communication technology at the time the principal signs the electronic signature. Section 117.285 outlines requirements to be complied with by a notary public when supervising the witnesses of electronic records, depending on the actual location of the witness. If the witness is located in the physical presence of the principal, the witness must confirm their identity by stating his or her name and current address

during the recorded conference. However, a remote witness's identity must be verified under the same requirements of a principal, as described above. Further, the remote witness must verbally confirm that he or she is a resident of and physically located within the United States or a territory of the United States at the time of witnessing. The plain text of the amended statute suggests, while there are no residency or location restrictions placed upon principals at the time of notarization, a RON cannot be performed with a non-resident witness or a witness who is not currently located within the United States or United States territory.

As the new law is made effective at the turn of the year, the process of closing transactions within the State of Florida has been streamlined. By eliminating the requirement of "wet signatures" and physical appearances by notaries, principals and witnesses, transactions may be quickly finalized: by facetiming a notary using your phone or tablet; provide your government-issued identification for quick verification and electronically executing the transaction documents. One should familiarize themselves with the new requirements and procedures outlined in Chapter 117 to fully take advantage of this modern convenience.

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