

Executive Order 2020-14: Temporarily Erasing the In Person Requirement for Notarization

Amundsen Davis Financial Services Alert
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While the Illinois government is trying to limit the contact that people are required to have during the COVID-19 pandemic, some requirements may be better off left alone. Executive Order 2020-14 enacted in Illinois allows the “appear before” requirement in the Illinois Notary Act, 5 ILCS 312/6-102 to be satisfied by using a remote notarization and two-way audio-video communication technology. There are requirements for the two-way audio-video communication technology and remote notarization, which include:

- The audio-video communication technology must allow for contemporaneous and direct interaction between the signer and the notary;
- A recording of the signing must be kept and preserved for at least three years by the signer;
- The signer must attest that they are in Illinois;
- The notary must physically be in Illinois;
- The signer must state what they are signing and each page must be shown to the notary during the remote notarization, which shall be clearly legible and initialed by the signer;
- The act of signing must be captured close up;
- The signer must send the signed document by fax or electronic means no later than one day after the signing;
- The notary must sign and send the document back via fax or electronic means within 24 hours of receiving the initial document copy; and
- The notary may sign the original document if necessary as of the date of the original execution provided the notary receives the original document along with copies of the fully signed documents within third days from the date of the remote notarization.

These requirements do seem to provide some safeguards for this remote notarization process. For example, the requirement that the signing take place close up, each page be shown to the notary, and that the session be recorded and preserved for at least three years. This is definitely a better physical record

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than businesses and banks have now of documents they require to be notarized. However, Executive Order 2020-14 allows for this recording to be kept by the signer. As the signer is the one that may have an ulterior motive for signing the document, this seems counter intuitive and could be a recipe for fraud or even duress. The recording or document could be modified by the signer or there could be someone off camera forcing the signer to sign the document.

Business and banks should be careful relying on documents signed using this remote notarization process as Executive Order 2020-14 may deviate too far from the traditional safeguards. Remote notarization could lead to identity verification issues. Is the signer's driver's license real or fake? How does the notary tell whether identification is real when being shown this over the audio-visual session? There also could be issues with document pages being altered or switched out completely after being signed and notarized as the copies are transmitted back and forth between the signer and the notary. Executive Order 2020-14 does allow businesses and banks to keep operating as normal as possible during this pandemic, but at what cost?

Because of the potential fraud that could occur, it may be best if businesses and banks require a copy of the recorded notarization be kept in their files. However, this may open up a whole different problem of data security issues as the recorded notarization session would need to be kept as a computer file. In this highly technological world, businesses and banks should speak to their attorneys regarding any legal concerns they may have with this highly evolving situation and how it may impact them.

Other Midwestern states including Wisconsin, Missouri, and Indiana either have a similar executive order or laws in place regarding remote notaries. Missouri has Executive Order 20-08, which allows for remote electronic notarization, which also suspends the in person requirement and authorizes audio-video technology to be used. Prior to the COVID-19 pandemic in 2018, Indiana passed Senate Bill 372, which was signed into law by the governor, allowing for remote notarization. Finally, a new law in Wisconsin allows for remote notarization, 2019 Wisconsin Act 125, but it does not take effect until May 1, 2020. However, emergency guidance issued by the Wisconsin Department of Financial Institutions has come out and allows for remote notarization of certain documents effective now. While these executive orders and laws are important to limit contact in this unprecedented time, businesses and banks need to be careful to make sure all rules and requirements are followed closely.

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