

Please post. Thanks.

From: Charles Storrow <chuck@leoninepublicaffairs.com>

Sent: Friday, May 4, 2018 4:00 PM

To: Knapp, James E.

Cc: Therese Corsones; Winters, Chris; Jeanne Kennedy; BetsyAnn Wrask; Maida Townsend; Rob LaClair; Andy Mikell

Subject: Re: [External] RE: H.526 remote notarization amendment

Our client, VT Attorney's Title Corp., which is a VT domiciled company, is opposed to the idea of remote notarization under any scenario, and prefers that the committee recommend to the full House that it concur with the Senate's changes.

VATC's concerns relative to remote notarization are two fold:

1. The possibility of fraud. It is important that the person who is executing a real estate instrument is who he or she says they are. To ensure that is the case it is important that the notary be able to physically inspect the person's ID.
2. The negative impact remote notarization would have on Vermont attorneys, banks and title insurers. Out of state lenders currently have to use VT attorneys to conduct closings unless the involved Vermonters go to where the out of state lender is located. Remote notarization would allow out of state lenders to conduct remote closings that do not involve VT attorneys. By cutting out the need to have a VT attorney involved remote notarization would also enhance the ability of out of state lenders to engage in mortgage lending in Vermont, to the detriment of Vermont banks and credit unions. Since VT Attorneys Title Corp provides title insurance only in VT would lose business, too.

It is important to note that a real estate instrument that is executed and acknowledged ("notarized") in another jurisdiction is valid in Vermont if done properly in accordance with the requirements of the other jurisdiction. Thus, a Vermonter who is in another state or is overseas can have their signature notarized by a notary in the other jurisdiction. This is also the case with military personnel serving overseas. Federal law allows a wide variety of military personnel to perform notarial acts and per federal law notarial acts done in accordance with federal law are valid in the states. Disallowing remote notarization will not negatively affect military personnel serving overseas.

Finally, very few states allow remote notarization, and none of them are in New England. There is no need for Vermont to be out front on this issue.

Thank you for considering the foregoing.

Sincerely--Chuck Storrow

PS: I added my client contact, Andy Mikell, to this email.

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On May 4, 2018, at 3:01 PM, Knapp, James E. <jimknapp@firstam.com> wrote:

Yes that is a better phrasing.

Jim Knapp

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On May 4, 2018, at 2:49 PM, Therese Corsones <tcorsones@vtbar.org> wrote:

Hi Chris:

Thanks very much; the only question I have is if the new §5364(b)(1) should read “the notary and the person *executing* the signature are in the same physical place”, instead of “the notary and the person *requesting* the signature . . .” Thanks again!

Teri

From: Winters, Chris [<mailto:chris.winters@sec.state.vt.us>]

Sent: Friday, May 4, 2018 2:39 PM

To: Therese Corsones <tcorsones@vtbar.org>; 'Knapp, James E.'

<jimknapp@firstam.com>; 'Jeanne Kennedy' <jbkennedyllc@comcast.net>;
Charles Storrow <chuck@leoninepublicaffairs.com>; 'BetsyAnn Wrask'
<BWrask@leg.state.vt.us>
Cc: Maida Townsend <MTownsend@leg.state.vt.us>; 'rclair@leg.state.vt.us'
<rclair@leg.state.vt.us>
Subject: H.526 remote notarization amendment

Hello All,

See below for my attempt at language to address the concerns raised today. We certainly do not want to foreclose the possibility of remote notarization in Vermont but we also do not want to kick the door wide open without some standards in place. If you have any quick fixes, let me know. I am including Betsy and the committee Chair and Vice Chair now because time is so short and we do not have time for a lot of back and forth. Thank you!

Chris

DRAFT AMENDMENT FOR H.526 ONLINE REMOTE NOTARIZATION

§ 5323. RULES

(a) The Office, with the advice of the advisor appointees, may adopt rules to implement this chapter. The rules may:

- (1) prescribe the manner of performing notarial acts regarding tangible and electronic records;
- (2) include provisions to ensure that any change to or tampering with a record bearing a certificate of a notarial act is self-evident;
- (3) include provisions to ensure integrity in the creation, transmittal, storage, or authentication of electronic records or signatures;
- (4) prescribe the process of granting, renewing, conditioning, denying, suspending, or revoking or otherwise disciplining a notary public and assuring the trustworthiness of an individual holding a commission as notary public;
~~and~~
- (5) include provisions to prevent fraud or mistake in the performance of notarial acts; and
- (6) prescribe standards for remote online notarization, including but not limited to: standards for credential analysis, the process through which a third person affirms the identity of an individual, the methods for communicating

through a secure communication link, the means by which the remote notarization is certified, and the form of notice to be appended disclosing the fact that the notarization was completed remotely on any document acknowledged through remote online notarization.

(b) Rules adopted regarding the performance of notarial acts with respect to electronic records and remote online notarization may not require, or accord greater legal status or effect to, the implementation or application of a specific technology or technical specification. In adopting, amending, or repealing rules regarding notarial acts with respect to electronic records and remote online notarization, the Office shall consider, as far as is consistent with this chapter:

(1) the most recent standards regarding electronic records and remote online notarization promulgated by national bodies, such as the National Association of Secretaries of State;

(2) standards, practices, and customs of other jurisdictions that substantially enact this chapter; and

(3) the views of governmental officials and entities and other interested persons.

(c) Neither electronic notarization nor remote online notarization shall be allowed until the Secretary of State has adopted rules and prescribed standards in these areas.

* * *

§ 5364. PERSONAL APPEARANCE REQUIRED

(a) If a notarial act relates to a statement made in or a signature executed on a record, the individual making the statement or executing the signature shall appear personally before the notary public.

~~(b) A personal appearance does not include an acknowledgment using video conferencing software that uses the transmission of video images, or any other form of communication in which the notary public and the person requesting the notarial act are not in the same physical location at the same time.~~

(b) The requirement for a personal appearance is satisfied if:

(1) the notary and the person requesting the signature are in the same physical place; or

(2) the notary and the person are communicating through a secure communication link using protocols and standards adopted in rules promulgated by the Secretary of State pursuant to the rule making authority in this Chapter.

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FAFLD