

WFG Underwriting Bulletin



To: All New York Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: March 31, 2020
Bulletin No.: NY 2020-09
Subject: NY Governor's Emergency Order 202.7 and E-Notarization

This New York specific bulletin will serve as a follow up to prior bulletins on remote notarization. WFG National Title Insurance Company is committed to communicating and updating you in this quickly changing environment.

We understand that there are limitations and challenges in real estate transactions right now up to, and including, the closing and recording of documents. We continue to have your best interest in mind as we work to find reasonable solutions in these difficult times.

To reiterate, Governor Andrew M. Cuomo issued Executive Order No. 202.7 on March 19, 2020. The executive order allows for "virtual notarization" in New York State, subject to certain requirements, effective immediately through April 18, 2020.

Regarding "virtual notarization", it has been suggested that established RON platform providers be used. However, it has been brought to our attention that these platforms may not be suitable for use in New York and that some providers are working on a solution for the New York market. We also understand there are delays in being "on-boarded" by some providers and it is important to weigh different options.

Please be advised that a traditional closing can still be done if certain precautions are taken. These regulations do not prohibit traditional closings or variations thereof. For example a title closer can drop off a package at a borrower's house and view the execution of the documents to be notarized from a window. It is important that the notary affix their stamp to the "wet" signature documents. (We must have original documents with signatures for recording in New York.) Keep "social distancing" in mind. If using a method other than a

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traditional closing, please be advised that the lender must approve the platform, whether it is Zoom or some other online service, and that the lender's approval should be obtained in writing and placed in the file. Should a better solution be developed by a provider, we will communicate that to you as soon as possible.

This is an unprecedented time, and we will continue to innovate and work with our agents and customers to make this as easy and as productive as possible. We will get through this together!

To revisit the Executive Order, set forth in its entirety, it provides as follows:

Any notarial act that is required under New York State law is authorized to be performed utilizing audio-video technology provided that the following conditions are met:

The person seeking the Notary's services, if not personally known to the Notary, must present valid photo ID to the Notary during the video conference, not merely transmit it prior to or after;

The video conference must allow for direct interaction between the person and the Notary (e.g. no pre-recorded videos of the person signing);

The person must affirmatively represent that he or she is physically situated in the State of New York;

The person must transmit by fax or electronic means a legible copy of the signed document directly to the Notary on the same date it was signed;

The Notary may notarize the transmitted copy of the document and transmit the same back to the person; and

The Notary may repeat the notarization of the original signed document as of the date of execution provided the Notary receives such original signed document together with the electronically notarized copy within thirty days after the date of execution.

Let us examine the conditions set forth in the Governor's order line by line.

The person seeking the Notary's services, if not personally known to the Notary, must present valid photo ID to the Notary during the video conference, not merely transmit it prior to or after;

During the closing the individual must hold up a valid photo ID to be examined by the notary. The photo ID produced should be a government issued ID such as a driver's license or passport. **WFG requires 2 forms of photo ID, one of which must be government issued.**

The video conference must allow for direct interaction between the person and the Notary (e.g. no pre-recorded videos of the person signing);

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The video conference must be in “real time” with all parties having the ability to see and speak with each other as if they were in the same room at the same time, i.e. a “normal closing”.

It is strongly suggest that the transaction be recorded and the recording be preserved by the title agent.

You will be required to maintain security protocols, such as password protection and the ability to record and retain the transaction.

The person must affirmatively represent that he or she is physically situated in the State of New York;

For notarial purposes the individual must affirm that they are located in the State of New York. For acknowledgment purposes the location of the individual is what controls.

The person must transmit by fax or electronic means a legible copy of the signed document directly to the Notary on the same date it was signed;

The individual should have access to a fax machine or scanner so that the executed documents can be transmitted to the notary. In the event the individual does not have access the individual must take legible pictures of the executed documents and email them to the notary **DURING THE RECORDING OF THE TRANSACTION.**

The Notary may notarize the transmitted copy of the document and transmit the same back to the person; and

Please note that the word “may” is used as opposed to “shall” meaning that it is not required that the notary transmit the notarized documents back to the individual, mortgagor or purchaser. Please be aware that the agent must retain a complete copy of the notarized documents for their file.

The Notary may repeat the notarization of the original signed document as of the date of execution provided the Notary receives such original signed document together with the electronically notarized copy within thirty days after the date of execution.

Thirty days is far too long as the documents should be submitted for recording before then.

Please be advised that the documents need to be overnighted IMMEDIATELY to the notary so that the notary can affix their stamp to the “wet” signatures on the document.

Please note that Federal Express and UPS will be operating as they are considered “essential” services.

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Please be patient as we work through our day-to-day challenges. Our intention is to work with you, our agents, during these difficult times and work towards better solutions in order for you to continue doing business. While the RON platforms we mentioned in our earlier bulletins have been used in other States that have adopted RON laws and approved vendors, New York is operating under emergency regulations and WFG is committed to finding workable solutions in the closing process that will be both secure and convenient.

Should you choose to do a virtual closing, a checklist is annexed for your ready reference. A checklist should be completed **PER CLOSING** and put in the closing file. In the event you scan your files post-closing for storage purposes please include this in the file.

Additionally, the individuals whose signatures are being notarized via video conferencing **MUST** execute the [annexed affidavit](#), in which they consent to the e-notary transaction and recording. As set forth above these affidavits must be completed **PER CLOSING** and if you scan your files post-closing please include this in the file.

Finally, please remember **the Governor's Executive Order is just that-an order issued in a time of crisis and does not replace a true statute authorizing e-notary. The order was issued with social distancing in mind. When e-notarization becomes statutory law in NY it will be much more comprehensive in terms of platforms, security, etc. This order allows us to continue closing transactions online for the short term only.**

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E-Notarization Checklist- NY

ALL CONDITIONS SET FORTH UNLESS NOTED ARE REQUIRED!!!

The closing transaction **must** be recorded. Do not start recording until all parties are present in their respective locations

Preliminary

Is the video-audio connection between the parties in real time? _____ (Nothing pre-recorded) Can the parties converse as if they are in the same room? _____

Does the platform employed record and preserve the closing transaction, is password protected and has the ability to record and retain? _____

MAKE SURE THE LENDER APPROVES OF THE PLATFORM EMPLOYED IN WRITING!

The individual must transmit by fax or electronic means a legible copy of the signed document directly to the Notary on the same date it was signed-verify that the individuals have the means to do that _____

Has the individual named _____ affirmatively acknowledged his/her willingness to be recorded and consented to the e-notarization via the recording? _____ Take attendance

Ex-“Mr. Smith, you are here today, March 27, 2020, to close a refinance loan with Mega Bank on premises located at 123 Main Street, NY, NY and are doing so remotely-your signature will be notarized remotely and as such kindly be advised that this entire closing transaction is being recorded and that you consent to this transaction being recorded.” Have the individuals affirmed that?

Has the Lender and Lender’s counsel consented to the recording and e-notarization? _____ (probably can be done with an affirmative e-mail from those entities)

Are the individuals located in New York? _____ (ask them what address they are doing the transaction from)

Is the Notary a New York State licensed Notary? _____

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During Closing

Have the individuals produced 2 forms of photo ID, one of which is a government issued ID, and held them up for verification **DURING** the closing? _____ (CANNOT BE BEFORE OR AFTER)

Has/Have the individuals executed the documents on camera? The execution of the signatures must be visible and it is preferred that the individual identify what document they are signing. The closer is of course primarily concerned with the mortgage, CEMA, etc. as that is what will be recorded in a refinance. On a sale obviously the deed signing by the grantor must be witnessed by the notary, etc. Don't forget that the attorneys for the respective parties can notarize their clients' signatures.

Once all the documents are executed the notary may notarize the transmitted copy of the document and transmit the same back to the person. Original documents should be overnighted to the notary, including photocopies of the IDs, so that the notary can affix the notary to the original "wet" signatures, and they can overnight the documents to the bank attorney.

Title # _____ **Closing Date:** _____

Premises: _____

Borrowers/Buyers: _____

Sellers: _____

Person completing this checklist: _____

Reminder-This form cannot be used after 4/18/2020!

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