

WFG Underwriting Bulletin



To: All Pennsylvania WFG Policy Issuing Agents; all Pennsylvania WFG Title Examiners and Offices
From: WFG Underwriting Department
Date: November 6, 2020
Bulletin No.: PA 2020-07
Subject: PA Remote Notarizations Update; New Legislation

On October 29, 2020, [57 Pa.C.S.A. § 306.1](#) went into effect, allowing for a notarial act to be performed for a remotely located individual. This statute is now controlling authority on “remote notarizations,” and this Bulletin supersedes our prior PA Bulletin 2020-06, which discussed temporary legislation.

The language in the statute is relatively self-explanatory:

- (1) The notary public:
 - (i) has personal knowledge under section 307(a) (relating to identification of individual) of the identity of the individual;
 - (ii) has satisfactory evidence of the identity of the remotely located individual by oath or affirmation from a credible witness appearing before the notary public under section 307(b)(2) or under this section; or
 - (iii) is able to reasonably identify the individual by at least two different types of identity proofing processes or services.

- (2) The notary public is able to reasonably identify a record before the notary public as the same record:
 - (i) in which the remotely located individual made the statement; or
 - (ii) on which the remotely located individual executed the signature.

- (3) The notary public, or a person acting on behalf of the notary public, creates an audio-visual recording of the performance of the notarial act, including all interactions between the notary public and the remotely located individual. *(Note: must be retained for at least ten years, or as otherwise required by law.)*

- (4) If the remotely located individual is located outside the United States, all of the following apply:
 - (i) The record:
 - (A) is to be filed with or relates to a matter before a court, governmental entity, public official or other entity under the jurisdiction of the United States; or
 - (B) involves:
 - (I) property located in the territorial jurisdiction of the United States; or

(II) a transaction substantially connected with the United States.

(ii) The act of making the statement or signing the record is not prohibited by the foreign state where the remotely located individual is located.

Although the statute provides for remote notarizations by individuals in a foreign country, please obtain underwriter approval before implementing this option. The preferred method is acknowledgment at the US Embassy, or a Foreign Notary with an Apostille (Hague Convention members) or, for non-Hague members, Authentications from the host country and US Embassy.

The notarial certificate must indicate that the act was performed by means of communication technology. In addition, the notary must notify the PA Department of State that they will be performing notarial acts facilitated by communication technology, and identify the technology used.

The Department will establish standards for approval of the communication technology and identity proofing, and will promulgate regulations. Until those regulations are distributed, we will follow previously established rules:

1. Comply with all [guidance provided by the PA Department of State](#).
2. Skype, Zoom, and FaceTime alone are NOT acceptable, according to the Department and our previous guidance.
3. When using approved and alternative technologies (See [NB 2020-05](#)), please be alert to possible state and Federal privacy laws as well as the risk from potential data breaches, especially if you are using a technology that was not designed specifically for these situations.
4. Agents are responsible to confirm, prior to closing, that the county where the real estate is located accepts electronically executed documents for filing, i.e., must accept “e-recordings.”
5. All parties to the transaction: buyer/borrower, seller, and lender must agree, in writing, to the use of your specific remote technology procedure. The lender’s closing instructions must be reviewed carefully to ensure the closing instructions permit remotely acknowledged documents. Many “standard” closing instructions are vague and/or inconsistent when viewed in the context of remote operations.
6. You may want to check with your E&O carrier to be sure that you are covered when using remote notarizations and any resulting data breaches.

As always, the WFG underwriting team is available to assist with any questions you may have.

NOTE: This Bulletin is for the sole purpose of establishing underwriting positions and policies reflecting WFG National Title Insurance Company’s best business judgment. The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company’s Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.