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New York Enacts Statute Authorizing Remote, Electronic Notarization

January 31, 2023

New York State has enacted a number of changes in the rules and regulations governing notary services in the state. In addition to enacting a new statute which authorizes remote, electronic, on-line notarization, New York now requires notaries to maintain detailed records for a decade.

Remote, On-Line Notarization (RON)

The statute, New York Executive Law Section 135-c, goes into effect February 1, 2023. It authorizes notaries who register as electronic notaries with the New York Department of State and follow the new rules to perform electronic notary acts remotely where the notary and the signer are physically apart, but able to communicate in real time by sight and sound using methods authorized by the New York Secretary of State. Electronic notarization is done using commercially available software that complies with Department of State regulations. Commercial software is available to notaries to perform identity proofing and credential examination. This technology must have security protocols in place to prevent unauthorized access and fraud.

For electronic notarization, the notary must know the signer personally or use communications technology to identify the signer through credential analysis. Credential analysis is performed via a third-party service that validates government-issued identification presented by the person through a review of public and proprietary data sources. Additionally, the notary can use identity proofing in which a third party confirms the identity of the signer through review of personal information from public and proprietary data sources. Please note that while the notary public must be physically located in New York State, the signer does not need to be.

The new law replaces the type of remote ink notarization (or RIN) that was authorized by Executive Order and later by a temporary statute in response to the COVID-19 pandemic. After January 31, 2023, only traditional in-person notarization and electronic notarization under the new statute will be permitted in New York.

New Record Keeping Requirement for All Notaries

In a change affecting all notaries, not just those who register to provide electronic notarial service, as of January 25, 2023 all notaries are required to keep a journal of all notarial acts performed, including the type of identification provided, for a minimum of 10 years. Electronic notaries must maintain a journal of all notarial acts performed as well as an audio and visual record of all electronic notarial acts performed.

Traditional in-person notary journals must include:

1. The date, approximate time, and type of notarial acts performed;

2. The name and address of any individuals for whom a notarial act was performed;

3. The number and type of notarial services provided;

4. The type of credential used to identify the principal, including, for verification made where a notary relies on the oath or affirmation of two witnesses who identify themselves with a valid government-issued ID and who know the document signer personally, the names of the witnesses, and if applicable, the type of credential used; and

5. The verification procedures used for any personal appearance before the notary public.

In addition, remote, electronic on-line notary journals must also include:

6. Identification of the communication technology, certification authority, and verification providers used; and

7. An actual audio/video recording of the act.

Conclusion

The new law is a significant change to the rules covering notarial services in New York. The new rules are quite detailed and not necessarily intuitive. If you have any questions about the new notary regulations, please feel free to contact Thomas Baylis at (516) 357-3748 or via email at tbaylis@cullenllp.com. Thank you to Ian Amann-Rao, a Law Clerk pending New York bar admission, who assisted in the preparation of this alert.

Please note this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

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