

Client Alert

NJ Permits Remote Notary of Documents Using Audio-Visual Communication Technology

On April 15, 2020, legislation permitting documents to be notarized remotely in New Jersey (Assembly Bill No. 3903) was signed into law by Governor Murphy. The Act takes effect immediately and shall expire upon rescission of the state of emergency for COVID-19 declared by the Governor under Executive Order No. 103 of 2020.

Under the Act, a notary public of New Jersey and certain other authorized officers may perform notarial acts using **communication technology** for a **remotely located individual** if the following items are satisfied:

1. the notary public or authorized officer: (a) has **personal knowledge** of the identity of the individual appearing before the notary or officer, which is based upon dealings with the individual sufficient to provide reasonable certainty that the individual has the identity claimed; **or** (b) has **satisfactory evidence** of the identity of the remotely located individual by oath or affirmation from a **credible witness** appearing before the notary or officer; **or** (c) has obtained **satisfactory evidence** of the identity of the remotely located individual by using at least **two** different types of **identity proofing**;
2. the notary public or officer is reasonably able to confirm that a record before the notary or officer is the same record in which the remotely located individual made a statement or on which the remotely located individual executed a signature;
3. the notary public or officer or a person acting on their behalf creates an audio-visual recording of the performance of the notarial act; and
4. for any remotely located individual who is **located outside the United States**, the following particular items must be satisfied: (a) the record: (i) is to be filed with or relates to a matter before a public official or court, governmental entity, or other entity subject to the jurisdiction of the United States; or (ii) involves

April 17
2020

This Client Alert has been prepared by Sills Cummis & Gross P.C. for informational purposes only and does not constitute advertising or solicitation and should not be used or taken as legal advice. Those seeking legal advice should contact a member of the Firm or legal counsel licensed in their state. Transmission of this information is not intended to create, and receipt does not constitute, an attorney-client relationship. Confidential information should not be sent to Sills Cummis & Gross without first communicating directly with a member of the Firm about establishing an attorney-client relationship.

Client Alert

property located in the territorial jurisdiction of the United States or involves a transaction substantially connected with the United States; and (b) the act of making the statement or signing the record is not prohibited by the foreign state in which the remotely located individual is located.

The Act does **not** apply to notarization of a record to the extent such record is governed by: (1) the Uniform Commercial Code of New Jersey (N.J.S. 12A:1-101 et seq.), with certain limited exceptions¹ ; or (2) a statute, regulation or other rule of law governing adoption, divorce or other matters of family law.

It is important to note that if a notarial act is performed using communication technology, the notary certificate on the document must indicate that the notarial act was performed using communication technology. In addition, a recording of the audio-visual session must be retained for a period of at least ten years after the recording is made.

As used in the Act, the following terms are defined as follows:

- A “remotely located individual” means an individual who is not in the physical presence of a notary public (or an authorized officer) performing a notarial act under the Act.
- “Communication technology” means an electronic device or process that: (1) allows a notary public (or an authorized officer), and a remotely located individual to communicate with each other simultaneously by sight and sound; and (2) when necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing or speech impairment.
- “Identity proofing” means a process or service by which a third person provides a notary public (or an authorized officer) with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.
- “Satisfactory evidence” means a passport, driver’s license, or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act; another form of governmental identification issued to an individual, which is current or expired not more than three years before performance of the notarial act, contains the signature or a photograph of the individual, and is satisfactory to the notary public or authorized officer; or a verification on oath or affirmation of a credible witness personally appearing before the notary public or authorized officer and known to the notary public or officer or whom the notary public or officer can identify on the basis of a passport, driver’s license or government issued nondriver identification card, which is current or expired not more than three years before performance of the notarial act.
- “Outside the United States” means a location outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory, insular possession, or other location subject to the jurisdiction of the United States.

Client Alert

The Act permits the New Jersey State Treasurer to adopt rules or amend provisions as necessary to implement the Act, including providing additional standards for communication technology and identity proofing and the retention of an audio-visual recording. In this regard, the State Treasurer is directed to consider the most recent standards promulgated by national standard-setting organizations (such as the Mortgage Industry Standards Maintenance Organization) and the recommendations of the National Association of Secretaries of State. In the event any additional rules are adopted to implement the provisions of the Act, we will update this Alert as warranted.

¹ The following provisions of the Uniform Commercial Code are subject to the Act: the provisions of the “Uniform Commercial Code – Sales” (chapter 2 of Title 12A of the New Jersey Statutes), and the provisions of the “Uniform Commercial Code – Leases” (chapter 2A of Title 12A of the New Jersey Statutes).

If you would like additional information, please contact:

Mark S. Levenson, Esq.

Client Alert Co-Author; Chair, Real Estate Practice Group

mlevenson@sillscummis.com | (973) 643-5756

Jeffrey Meltzer, Esq.

Client Alert Co-Author; Member, Real Estate Practice Group

jmeltzer@sillscummis.com | (973) 643-5213