WEST VIRGINIA CODE: §39-4-37

§39-4-37. Remote online notarial act performed for remotely located individual.

(a) In this section:

(1) “Communication technology” means an electronic device or process that:

(A) Allows a notary public and a remotely located individual to communicate with each other simultaneously by sight and sound; and

(B) When necessary and consistent with other applicable law, facilitates communication with a remotely located individual who has a vision, hearing, or speech impairment.

(2) “Foreign state” means a jurisdiction other than the United States, a state, or a federally recognized Indian tribe.

(3) “Identity proofing” means a process or service by which a third person provides a notary public with a means to verify the identity of a remotely located individual by a review of personal information from public or private data sources.

(4) “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.

(5) “Remotely located individual” means an individual who is not in the physical presence of the notary public who performs a notarial act under subsection (c) of this section.

(b) A remotely located individual may comply with the provisions of this section by using communication technology to appear before a notary public.

(c) A notary public located in this state may perform a notarial act using communication technology for a remotely located individual if:

(1) The notary public:

(A) Has personal knowledge of the identity of the individual;

(B) 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 §39-4-1 *et seq*. of this code; or

(C) Has obtained satisfactory evidence of the identity of the remotely located individual by using at least two different types of identity proofing;

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(2) The notary public is reasonably able to confirm that a record before the notary public is the same record in which the remotely located individual made a statement or on which the individual executed a 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; and

(4) For a remotely located individual located outside the United States:

(A) The notary public is commissioned as an Out-of-State Commissioner pursuant to §39-4A-1 *et seq*. of this code; and

(B) 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 West Virginia; or

(ii) Involves property located in or a transaction substantially connected with West Virginia.

(d) If a notarial act is performed under this section, the certificate of notarial act required by §39-4-15 of this code and the short-form certificate provided in §39-4-16 of this code must indicate that the notarial act was performed using communication technology.

(e) A short-form certificate provided in §39-4-16 of this code for a notarial act subject to this section is sufficient if it:

(1) Complies with rules adopted under subdivision (1), subsection (h) of this section; or

(2) Is in the form provided in §39-4-16 of this code and contains a statement substantially as follows: "This notarial act involved the use of communication technology".

(f) A notary public, a guardian, conservator, or agent of a notary public, or a personal representative of a deceased notary public shall retain the audio-visual recording created under subdivision (3), subsection (c) of this section or cause the recording to be retained by a repository designated by or on behalf of the person required to retain the recording. Unless a different period is required by rule adopted under subdivision (4), subsection (h) of this section, the recording must be retained for a period of at least five years after the recording is made.

(g) Before a notary public performs the notary public's initial notarial act under this section, the notary public shall notify the Secretary of State that the notary public will be performing notarial acts with respect to remotely located individuals and identify the technologies the notary public intends to use. If the Secretary of State has established standards under subsection (h) of this section for approval of communication technology or identity proofing, the communication technology and identity proofing must conform to the standards.

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(h) The Secretary of State may adopt legislative rules under the provisions of this section regarding performance of a notarial act. The rules may:

(1) Prescribe the means of performing a notarial act involving a remotely located individual using communication technology;

(2) Establish standards for communication technology and identity proofing;

(3) Establish requirements or procedures to approve providers of communication technology and the process of identity proofing; and

(4) Establish standards and a period for the retention of an audio-visual recording created under the provisions of this section.

(i) Before adopting, amending, or repealing a legislative rule governing performance of a notarial act with respect to a remotely located individual, the Secretary of State shall consider:

(1) The most recent standards regarding the performance of a notarial act with respect to a remotely located individual promulgated by national standard-setting organizations and the recommendations of the National Association of Secretaries of State;

(2) Standards, practices, and customs of other jurisdictions that have laws substantially similar to this section; and

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

(j) By allowing its communication technology or identity proofing to facilitate a notarial act for a remotely located individual or by providing storage of the audio-visual recording created under this section, the Secretary of State shall be the provider of the communication technology, identity proofing, or storage as the provider’s agent for service of process in any civil action in this state related to the notarial act.

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