WEST VIRGINIA CODE: §39-4-38

§39-4-38. Remote ink notarial act performed for remotely located individual.

(a) A document may be notarized for an individual who is not in the physical presence of the notary public at the time of the notarization if the following requirements are met:

(1) The individual and the notary can communicate simultaneously, in real time, by sight and sound using communication technology defined in §39-4-37 of this code;

(2) In performing a remote notarization pursuant to the provisions of this section, the notary reasonably identifies the individual at the time of notarization by one or more of the following methods:

(A) Personal knowledge of the individual;

(B) The individual presents a government-issued, unexpired identification document or record which includes the individual's photograph, name, and signature. Common acceptable forms of identification documents include, but are not limited to, a driver's license, government-issued identification card, or passport;

(C) At least two different types of processes or services by which a third person provides a means to verify the identity of the individual through a review of public or private data sources; or

(D) Oath or affirmation by a credible witness who:

(i) Is in the physical presence of either the notary or the individual; or

(ii) Is able to communicate in real time with the notary and the individual by sight and sound through an electronic device or process at the time of the notarization, if the credible witness has personal knowledge of the individual and has been reasonably identified by the notary by a method provided in this section.

(b) The notary, either directly or through an agent, shall satisfy the following requirements for generating and retaining a record of a notarization performed pursuant to this section:

(1) At the time of the performance of the notarization, the notary or notary's agent shall create an audio and visual recording of the signing and notarization; and

(2) The notary or notary's agent shall retain the recording as a notarial record for five years unless otherwise provided by law.

(c) When an individual who is physically located outside of the state of West Virginia seeks a remote notarization pursuant to this section, the following additional requirements shall also

WV Legislature

be met:

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

(2) The record being notarized must:

(A) Be intended for filing or presentation in a matter before a court, governmental entity, public official, or other entity subject to the jurisdiction of West Virginia;

(B) Involve property located in the territorial jurisdiction of West Virginia or a transaction substantially connected to the state of West Virginia; or

(C) Otherwise not be prohibited, by West Virginia law to be notarized outside the state of West Virginia.

(d) Once signed by the individual according to the procedures set forth in this section, the individual shall mail or otherwise cause to be delivered the signed original copy of the documents to the notary public for certification and execution with the notary's commission signature and official stamp or seal.

(e) The date and time of the notarization shall be the date and time when the notary witnessed the signature being performed via communication technology.

(f) Nothing in this section affects the authority of a notary public to refuse to perform a notarial act or requires a notary to perform a notarization remotely:

(1) With respect to an electronic record;

(2) For an individual not in the physical presence of the notary; or

(3) Using a technology that the notary has not selected.

(g) The Secretary of State may adopt rules under 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 this section.

WV Legislature

(h) Before adopting, amending, or repealing a 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.

(i) 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.

WV Legislature