



April 2, 2020

The Honorable Gavin Newsom
Governor
State Capitol Building
Sacramento, CA 95814

Re: Request for Emergency Executive Order Recognizing Validity of Legally Remotely Notarized Documents and Mandating their Recordation by County Recorders

Dear Governor Newsom:

The undersigned industry organizations would like to thank you for your decisive leadership and actions during what has proven to be a challenging and uncertain time for all Californians in the face of the ongoing COVID-19 pandemic.

As you continue to make difficult but necessary decisions to protect public health, the unavoidable implications for California's economy are becoming clear. In particular, our organizations are concerned that interruptions to certain essential services, including specific services within the real estate industry that are crucial to Californians' ability to conduct real estate transactions, could have very negative economic ramifications for citizens at a time when they are already under stress. As you know, the real estate industry is one of the primary drivers of California's economy.

We therefore respectfully request that you consider taking action to help address this issue, without compromising social distancing directives or public health, by issuing an executive order expressly providing or affirming that California law recognizes the validity of documents that are legally remotely notarized in accordance with the laws and jurisdictions of the notary, and furthermore mandate that such legally remotely notarized documents be accepted for recordation in all California counties when presented. While California Civil Code 1189(b) appears to provide for such interstate recognition, the application of this provision to remote online notarization has not been determined by the courts of California, and such certainty is important.

This order would codify written guidance recently issued by the California Secretary of State in communications to the National Notary Association and State Senator Hurtado, which reads:

“...California citizens who wish to have their documents notarized remotely can obtain notarial services in another state that currently provides remote online notarization. California Civil Code 1189(b) provides that any certificate of acknowledgment taken in another place shall be sufficient in this state if it is taken in accordance with the law of the place where the acknowledgment is made.”

In addition, as some California counties do not currently possess the authority to record such documents, this order would also ensure that Californians could not only continue to have their documents notarized, but also ensure that they be accepted for recordation by California’s county recorders. Recordation of notarized documents is a vital step within a financial transaction.

These measures would allow Californians and the undersigned businesses to conduct remote online notarization (RON) of documents critical to countless transactions, such as California consumers seeking to save money on their house payments by refinancing an existing mortgage or home builders seeking to notarize documents essential to the construction and sale of housing. In addition, this action would be vital to keeping one of the single most important aspects of California’s economy, the real estate industry, running during a time when so many Californians are faced with the prospect of layoffs and businesses are struggling to make ends meet.

Furthermore, updated selling guidance from government-sponsored entities (GSEs) Fannie Mae and Freddie Mac issued on March 31st provides, for purposes of selling loans on the secondary market, that lenders may only sell loans containing documents that have been remotely notarized if the state “expressly accepts...[RONs] performed out-of-state in accordance with the laws of the state in which the notarial act is performed.” Thus, it is critical that California home loans remain eligible for the secondary market in order to ensure that lenders can continue to provide home loan financing to Californians.

Given the ongoing pandemic, current requirements for a signer to be physically present in front of a notary are problematic and in conflict with your necessary orders directing Californians to shelter at home, avoid unnecessary contact and keep social distance from others in order to help prevent the spread of COVID-19.

Many businesses and residents have had to alter the way they conduct business during this time of crisis. We believe your action on this issue would help ensure the continued operation and flow of documents essential to many financial or legal transactions in a way that provides California consumers an alternative

to in-person contact, thereby aiding in the preservation of the public health and shoring up California's economy.

For all of these reasons, the undersigned respectfully request that you issue the attached Executive Order.

Sincerely,

California Association of Realtors
California Bankers Association
California Building Industry Association
California Business Properties Association
California Credit Union League
California Land Title Association
California Mortgage Bankers Association
Escrow Institute of California
Securities Industry and Financial Markets Association
Western Manufactured Housing Communities Association

cc: Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Honorable Toni Atkins, Senate Pro Tempore
Honorable Anthony Rendon, Assembly Speaker

Enclosure

REQUESTED ACTION

Executive Order

[Preamble]

WHEREAS specified individuals within the financial services sector, including workers who support and are needed to process and maintain systems for processing financial transactions and services, are designated by the State Public Health Officer within Executive Order N-33-20 as “Essential Critical Infrastructure Workers” to help ensure continuity of functions critical to, among other things, economic and national security; and

WHEREAS California Law does not currently provide the authority for California Notaries Public to perform a remote online notarization because the personal appearance of the document signer is required before the notary public; and

WHEREAS the California Secretary of State’s office has declared that California citizens who wish to have their documents notarized remotely can obtain notarial services in another state that currently provides remote online notarization, and citizens would benefit from being certain that such documents are valid,

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8571, 8627, and 8665 do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

- 1) California citizens who need to have their documents notarized remotely can obtain notarial services through a notary public in another state that currently provides remote online notarization in compliance with the laws of the state in which the notary is commissioned.
- 2) The notary public providing notarial services under this executive order must utilize the services of a remote online notary vendor currently listed as a vendor system reviewed by Government-Sponsored Enterprises (GSEs) as listed at the following URLs:
 - <https://singlefamily.fanniemae.com/media/9466/display>
 - <https://sf.freddiemac.com/working-with-us/electronic-loan-documents/reviewed-vendor-list>
- 3) Any document acknowledged in accordance with the foregoing provisions shall be deemed to be duly and properly acknowledged and entitled to be recorded in accordance with the requirements of the law of the State of California.
- 4) All county recorders authorizing electronic recording in California shall accept, for recordation, all documents acknowledged in accordance with the foregoing provisions.

- 5) All county recorders that accept only paper documents for recordation in California shall accept for recordation a paper or tangible copy of an electronic record acknowledged in accordance with the foregoing provisions and that is otherwise eligible under state law to be recorded in the real property records if the paper or tangible copy of the electronic record: contains an image of an electronic signature or signatures that are acknowledged, sworn to with a jurat, or proved according to law; and has been declared by a notary public commissioned in the State of California to be a true and correct copy of the electronic record.

- 6) A document that is a paper or tangible copy of an electronic record acknowledged in accordance with the foregoing provisions, other than a promissory note or other negotiable instrument, and is printed and declared to be a true and correct copy satisfies any requirement of law that, as a condition for recording, the document: (1) be an original or be in writing; (2) be signed or contain an original signature, if the document contains an image of an electronic signature of the person required to sign the document; and (3) be notarized, acknowledged, verified, witnessed, made under oath, sworn to with a jurat, or proved according to law, if the document contains an image of an electronic signature of the person authorized to perform that act and all other information required to be included.

- 7) A notary public commissioned in the State of California may declare that a paper or tangible copy of an electronic record acknowledged in accordance with the foregoing provisions is a true and correct copy of an electronic record by: (1) executing and attaching an official seal to a tangible paper declaration under penalty of perjury; and (2) affixing or attaching the declaration to the printed paper or tangible copy of an electronic record.

- 8) The form of declaration required in accordance with the foregoing provisions must be substantially as follows:

DECLARATION OF AUTHENTICITY

State of California _____

County of _____

The attached document, _____(insert title), dated _____ and containing __ pages, is a true and correct copy of an electronic record printed by me or under my supervision. At the time of printing, no security features present on the electronic record indicated any changes or errors in an electronic signature or other information in the electronic record after the electronic record's creation or execution. This declaration is made under penalty of perjury.

Signed this ____ day of _____, ____.

_____(signature of notary public)

(seal of office)

_____(printed name of notary public)

My commission expires: _____

- 9) Any document acknowledged in accordance with the provisions of this order shall be deemed to be duly and properly acknowledged and entitled to be accepted by state or local governmental agencies in accordance with the requirements of the law of the State of California.
- 10) This order shall take effect immediately and shall remain in effect for the duration of the declaration of the state of emergency in California, unless earlier modified or terminated by me.