

Client Alert: Ohio Updates Notary Public Laws and Adopts Online Notarization Law

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On December 19, 2018, then-Governor John Kasich signed Senate Bill 263, the Notary Public Modernization Act (the Act), which, among other things, will permit online notarizations **beginning on September 18, 2019**. Under current law, electronic or remote notarization of documents is not permitted.

The new law allows a duly appointed and commissioned notary public, who is a resident of Ohio, to apply to the Ohio Secretary of State (the SOS) for authorization to perform notarizations online using live video links, electronic signatures and electronic notary seals. In order for a non-attorney individual to qualify to be appointed and commissioned as a notary public, the individual must be (i) at least eighteen (18) years old and (ii) a legal resident of Ohio. The individual must also have successfully completed an educational program, passed a test and submitted to the SOS an application (with a fee not to exceed \$150.00) and a criminal records check that is not more than six months old. The fees associated with the criminal records check vary, based on the type of background check conducted and the entity conducting the check.

It is important to note that under the new law any non-attorney notary public whose existing commission expires after March 18, 2019 will not be renewed unless the individual submits a criminal records check that is not more than six months old, a renewal application and an additional fee not to exceed \$60.00. This renewal requirement is applicable to all non-attorney notary publics and not just those who also want to be an online notary public. A non-attorney notary public may apply to renew his or her commission beginning three months prior to the expiration date of the commission.

In addition to the notary public's application to be appointed and commissioned as an online notary public, the notary public must successfully complete an educational course and pass a test, in addition to those necessary to acquire a notary public commission. Once appointed and commissioned as an online notary public, the individual will be subject to continuing education requirements.

The new law requires the SOS to adopt the applications, forms and rules for online notarizations, including rules related to the educational course and testing requirements, the approval process for performing online notarizations, the process and procedures for online notarial acts, the required technology, record retention requirements, online notarial certificates, and the revocation of the authorization to perform online notarizations. As of the date of the publication of this Client Alert, the SOS has not adopted any such applications, forms or rules.

The new law states that an online notary public may perform online notarizations only if the online notary public (i) is a resident of Ohio and (ii) is located within the geographical boundaries in Ohio at the time of the online notarization. Online notarization means a notarial act performed by means of live two-way video and audio conference technology that conforms to standards to be adopted by the SOS. The online notary public will be required to maintain electronic journals with details of all online notarizations, and to deposit those journals with the SOS or an approved repository on the expiration of the online notary public's authorization.

The new law specifically provides that an electronic document notarized through an online notarization shall be considered an original document. An electronic document is defined to mean any information that is created, generated, sent, communicated, received or stored in an electronic medium and is retrievable in perceivable form.

This Client Alert is a summary of certain provisions of Act and is qualified in its entirety by the Act. Vorys will continue to monitor the SOS and provide updates on the status of the SOS rules to be adopted regarding online notarizations.