

## Will the Recent Decrease in Formalities Associated with Transferring Real Property Due to COVID-19 Last?

Land is universally recognized as a unique and valuable resource. Land ownership has historically been a symbol of wealth, passed down by families for generations. We use the land to take shelter, grow food, hunt game, mine minerals, harvest timber, and raise domesticated livestock. There is not a way to create more land. No two pieces of land are exactly the same, if for no other reason than their location. The characteristics of each property, no matter how small, differ from those of every other property. An individual piece of property has no substitute because each is entirely unique.

There are millions of real estate transactions each year involving sales of houses, commercial properties, and undeveloped tracts of land, large and small. Given the uniqueness of real property, it should come as no surprise that the transfer of real property is accompanied by certain formalities.

In medieval England, land ownership changed hands during a public ceremony. The seller and buyer physically met on the land, where the seller orally stated his intention to transfer the land while in the presence of witnesses. The seller also gave to the buyer a physical object that was symbolic of the land itself, such as a flower, berry or rock. In the late seventh century, the English Parliament enacted the Statute of Frauds, which requires transfers of real property to be in writing and signed.

In the United States, every state has its own version of the Statute of Frauds. Each state has statutes requiring certain minimum standards and formalities for transfers to real property, including deed witness and notary requirements. These standards are meant to minimize the risk of fraud in the transfer of real property and securely preserve the rights of true property owners.

When COVID-19 reared its ugly head, the real estate industry was immediately threatened. The U.S. President as well as governors across the country declared public health emergencies. Social distancing measures were implemented to assist in preventing the spread of and

mitigating the consequences of the pandemic. As a result, many parts of commerce and society came to a screeching halt.

However, it soon became apparent there remains a need for real estate transactions, even if it is impracticable to safely conduct in-person meetings. Governors have issued executive orders and proclamations adopting measures to provide methods by which to execute important legal documents such as deeds while adhering to social distancing. These measures rely in large part on videoconferencing capabilities made available by the internet.

In Alabama and Mississippi, the remote notarization process is similar in many respects. Alabama does require notaries to either be an attorney or to operate under the supervision of a licensed attorney to be permitted to use videoconferencing. Notaries in both states must be able to communicate with the signing individual simultaneously by sight and sound through an electronic device or process at the time of signing. The notary must create and store an audiovisual recording of the performance of the notarization. Alabama notaries must maintain a record of the transaction for five years, while Mississippi notaries must do so for as long as the notary maintains an active registration.

Alabama and Mississippi notaries must be able to identify the signer through personal knowledge or using specific criteria, such as by government issued identification containing the signer's photograph and signature. The document to be notarized must be physically delivered to the notary for certification and execution. The official date of notarization is based on when the notary witnessed the signature being made via audiovisual communication.

For the time being, remote notarizations are only authorized until the expiration of the public health emergency. It remains to be seen how positive the reviews will be for this new process. State legislatures may be faced with requests to enact laws making these sorts of changes more permanent. The title industry will no doubt play a role in the legislative process.

The benefits of the videoconferencing based remote notarization process, including lower transaction costs and convenience, will be weighed against any security risks perceived to be inherent in the use of the technology. It is plausible there will be increased claims of fraudulent transfers specifically attributable to the use of remote notarization procedures, no matter how many precautions and safeguards are put in place. Ultimately, no matter how successful and

safe remote notarizations may prove to be, people's ideas about how formal real property transfers should be conducted may not change quickly. While people no longer have public ceremonies and hand over bunches of grapes to transfer a piece of property, they do still have expectations of what the process of buying or selling a piece of land should look like.

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