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## Congress Proposes Remote Notarization in Wake of COVID-19

As of March 30, 2020, in response to the COVID-19 outbreak, 30 jurisdictions in the United States issued statewide orders to “stay at home” or “shelter in place.” We all are aware that this means people generally are not permitted to leave their homes unless it is for life-sustaining reasons or to get some fresh air (while practicing social distancing), and non-essential businesses have been shuttered. These government orders have imposed severe limitations on the ability to execute notarized documentation required for most real estate transactions. As a result, the deals that were being negotiated a few weeks ago now are uncertain to close. To address uncertainty in the markets, the federal government has made unprecedented decisions to combat COVID-19 from a legal and financial perspective.

While the CARES Act receives the most attention, on March 18, 2020, Senators Mark Warner (D-VA) and Kevin Cramer (R-ND) introduced S. 3533, the “Securing and Enabling Commerce Using Remote and Electronic (SECURE) Notarization Act of 2020”. The SECURE Notarization Act is designed to promote safe and secure transactions and modernize the purchase and sale of real estate by (i) permitting nationwide use of Remote Online Notarizations (RON) technology in all US jurisdictions and (ii) authorizing interstate recognition of RON technology.

RON technology, which is currently being used in 23 jurisdictions within the U.S. allows consumers and notaries to use two-way audio-visual technology to securely execute documents. If enacted, the SECURE Notarization Act would authorize and establish minimum standards for the use of RON technology in all U.S. jurisdictions, which will provide a safe alternative to in-person notarization as stay-at-home and shelter-in-place orders remain in effect and will reduce the risk of uncertainty facing real estate transactions. The benefits of the SECURE Notarization Act include, but are not limited to:

- Authorizing every U.S. notary to perform RONs;
- Guidelines requiring tamper-evident technology in RONs;
- Establishing security standards, such as a multifactor authentication for identity proofing and recording of the notarial act;
- Access for signers outside of the US, such as military personnel and families, to use RONs;
- Allowing states the flexibility to implement their own state-specific RON standards; and

- Implement the recommendations from the 2018 Treasury Report providing a minimum uniform national standard for RONs.

The SECURE Notarization Act has received the support of the Real Estate industry, including endorsements by the American Land Title Association (ALTA), Mortgage Bankers Association (MBA) and the National Association of Realtors (NAR).

Although the SECURE Notarization Act will not be a cure-all to reduce uncertainty in real estate transactions in these unprecedented times, the bill signals Congress's willingness to modernize the notary requirements by allowing the use of RON technology. In a world where staying at home means staying safe, this legislation would not only reduce uncertainty in the market but also enable market participants to remain safe and healthy.



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