

TO: Executive Committee, New York State Bar Association
FROM: Executive Committee, Trusts and Estates Law Section
DATED: June 7, 2021
RE: Reports for May 2021 Meeting

RESOLVED, that the NYSBA Trusts and Estates Law Section supports the addition of Section 137-a to the New York Executive Law.

RESOLVED, that the NYSBA Trusts and Estates Law Section is in favor of the above legislation for the reasons set forth in the accompanying Memorandum in Support, without further comment.

Resolution Prepared By: Darcy M. Katris

Approved By: Vote of the Executive Committee of the NYSBA Trusts
and Estates Law Section

Section Chair: Jennifer F. Hillman

**NEW YORK STATE BAR ASSOCIATION
TRUSTS AND ESTATES LAW SECTION**

Proposed Legislation

It is hereby recommended that Section 137-a be added to the New York Executive Law to read as follows:

§ 137-a:

In addition to the provisions of Section 137 of this Article, any notarial act that is required under New York state law shall be authorized to be performed utilizing audio-video technology provided that the following conditions are met:

1. The person seeking the Notary's services (the "Signor"), if not personally known to the Notary, must present valid government-issued photo ID to the Notary during the video conference, not merely transmit it prior to or after;
2. The video conference must allow for direct interaction between the Signor and the Notary;
3. The Signor must affirmatively represent that he or she is physically situated in the State of New York;
4. The Notary must receive the original signed document via any means, or a legible copy of the signature page via fax or electronic means, on the same date it was signed or acknowledged by the Signor; and
5. Following receipt of the original signed document via any means or receipt of a legible copy of the signature page via fax or electronic means, the Notary shall notarize the document or signature page.

The foregoing shall be effective upon enactment.

Memorandum in Support

The Trusts and Estates Section (the "Section") seeks to add Section 137-a to the New York Executive Law which will permit virtual notarization.

In response to the Covid-19 emergency disaster and by Executive Order 202.7 dated March 19, 2020 (hereinafter "EO 202.7"), Governor Cuomo authorized notarial acts under New

York State law to be performed utilizing audio-video technology. EO 202.7 has been extended by Governor Cuomo roughly every 30 days since March 19, 2020.

The powers granted in EO 202.7 allowing for virtual notarization had an immediate and positive impact on residents of New York State as it allowed them to safely seek notarial services during the ongoing COVID-19 pandemic. The success of EO 202.7 highlights the benefits of codifying some form of technologically assisted notarization; however, it was not perfect. In proposing legislation to permit virtual notarization, the lessons learned from the year of experience with EO 202.7 have been taken into account.

With the vaccine rollout and decreasing rate of infection in NYS, it is unclear how much longer EO 202.7 will be extended or whether any notice will be given before it is no longer extended.

This Section submits that attorneys and clients have relied on virtual notarization and with many people still at home and offices closed, it is vital that this ability be continued.

Twenty-eight states have enacted some form of permanent electronic notarization.

Resolutions

Trusts and Estates Law Section, New York State Bar Association

Opinions expressed are those of the Section preparing these resolutions and do not represent those of the New York State Bar Association unless and until they have been adopted by its Executive Committee.