**HOUSE OF DELEGATES**

**Agenda Item #11**

REQUESTED ACTION: Approval of resolution of Task Force on Notarization.

Attached are a resolution and two reports from the Task Force on Notarization – the first report on Notary Record Keeping Regulations, the second report on Remote Online Notarization (“RON”) Credentialing.

By way of background, a new law, NY Executive Law Section 135-c, authorizes notaries to perform electronic notarial acts by registering with the Department of State and complying with new rules. Notaries wishing to provide electronic notary services can register with the Department of State as of February 1, 2023. New regulations promulgated by the Department of State further require that all notaries keep a journal of each notarization for a decade, and mandate that notaries who perform their jobs online using communications software maintain audio and video records for ten years.

In response to these developments, the Task Force on Notarization was established to review Executive Law 130, Executive Law 135-c, 22 NYCRR 132, and future and proposed legislation, and to make recommendations concerning the effects of these laws and regulations, including client representation, associated costs and efficiency, and access to justice considerations.

The first report on the Notary Record Keeping Regulations recommends that:

1) Record keeping requirements for notarizations other than electronic notarizations have no statutory basis and should be repealed.

2) The record keeping requirements for notarizations other than electronic notarizations contained in the regulations do not advance the goal of deed fraud reduction and should be repealed.

3) The application of the record keeping and record retention regulations to attorneys acting in the regular course of the attorney’s business is superfluous, implicates attorney client confidentiality, and imposes burdensome record retention requirements.

4) If the regulations are not repealed, a notary public who is an attorney at law regularly admitted to practice in this State or an employee of such attorney acting in the regular course of the attorney’s business should not be required to maintain records of notarizations other than electronic notarizations.

5) The Association shall support legislation and engage in legislative advocacy as appropriate to bring about these recommendations.

The second report on the Remote Online Notarization (“RON”) Credentialing recommends that:

1. The regulation should be amended so that an electronic notary must use a third-party provider licensed by the Secretary of State through a Self-Certification Model or an Application and Certification Model. The amended regulation will shift credentialing requirements away from the electronic notary to the third-party provider – simplifying the RON process. It will remove any confusion and doubt concerning compliance with the law, and promote the underlying purpose of NY Executive Law 135-c (to adopt societal advances and new technology).
2. The Association shall support legislation and engage in legislative advocacy as appropriate to bring about these recommendations.

On March 2, 2023, the Executive Committee adopted a resolution approving both reports and recommendations.

The approval of the House of Delegates is now sought to adopt the March 2, 2023, resolution. House approval of the resolution will formalize the recommendations contained therein as standing policy of the Association.

The resolution reads as follows:

WHEREAS, Executive Law 130 and 135-c, and regulations from Secretary of State 19 NYCRR 182 have been recently promulgated regarding electronic and non-electronic notarizations;

WHEREAS, these new laws and regulations have a significant impact on notaries and attorneys;

WHEREAS, there is no statutory basis for the record keeping and retention requirement for non-electronic notarizations;

WHEREAS, the new laws and regulations are unduly broad and burdensome on notaries and attorneys;

WHEREAS, the new law requires that a licensed electronic notary select a Credential service provider who meets certain technical requirements;

WHEREAS, in many circumstances, the licensed electronic notary lacks sufficient knowledge to determine whether the technical requirements have actually been met; and

WHEREAS, there is no showing that the new laws and regulations will diminish concerns of fraud that the legislation was intended to address;

WHEREAS, the efficiency of attorney notaries will be impacted by the above resulting in increased costs to consumers,

NOW, THEREFORE, IT IS RESOLVED that the Executive Committee approves the Reports and Recommendations of the Task Force on Notarization.

AND IT IS FURTHER RESOLVED that the officers of the New York State Bar Association are hereby authorized to take such other and further action as may be necessary to implement this resolution.

Notice of the reports was given to the Reports Group on Thursday, February 23, 2023. Comments were submitted by the Women in Law Section, the Erie County Bar Association, and member Richard Gutierrez, writing in his individual capacity.

The resolution will be presented by Task Force co-chairs Richard C. Lewis and Ellen G. Makofsky, together with members Jaime D. Lewis and Michael A. Markowitz.